

Supreme Court, U. S.
FILED

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MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1975

No. 75-562

ROSEBUD SIOUX TRIBE,

Petitioner,

v.

HONORABLE RICHARD KNEIP, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

APPENDIX
[Volume II – Pages 473-944]

PETITION FOR CERTIORARI FILED OCTOBER 11, 1975

CERTIORARI GRANTED MAY 24, 1976

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paid into the Treasury if it is disbursed under the provisions of this bill. This is my only business here at this time and I am ready to answer any questions you may wish to ask after considering the matter among yourselves. I do not expect a decision from you in an hour, or a day, or even three days. You need to think it over carefully and come to me to explain any question that may arise, which you may not fully understand.

My friends, I wish to say that when I am assigned to any duty of this kind, if I have no faith in it, I simply present it to the Indians and accept their answer, but if I have faith in it, I feel it my duty to urge its acceptance. I will be frank and truthful and make no misleading statements, so that should I return here again at any time, I will not be ashamed to look you each and all in the face and take you by the hand. The suggestion made last evening by Hollow Horn Bear that you would like to have the matter explained and then return to your homes and discuss it among the people of the several districts, is very good, and if that is your wish, we will adjourn until next Tuesday at one o'clock; but in the meantime, if you have any points you would like to have more clearly explained, I will respond to your call at any time.

(Hollow Horn Bear speaks to the Indian assemblage. Not interpreted)

HOLLOW HORN BEAR:-

I think the time is too short to hold the next council on Tuesday.

STRANGER HORSE:-

I want to say something. We live a long distance from here. [7] Our business is of great importance. You are from Washington and we need some money to provide us with rations during these negotiations. We do not want to do this running. We have to take our time and now that you are here, you ought to explain to the young men

who are working, and we can't get home and have a council in one day, that is impossible. I think that you should stay until we have plenty of time to settle the matter. We don't want to leave any one out and have dissatisfaction. I think that we ought to have a council member come to get our money the last of the month. Our Agent has taken care of a large number of people and when we come together, he ought to give us rations. If the Agent will give us permission to sell some beef at all of the Issue Stations, we can make a feast. We are here to see one another with a good heart and when we go home we ought to have a feast and do everything nice and smooth and polite. This bill is modified, and we have to talk about it so that we can understand. We ought to have a copy of the bill to take to each one of the Issue Stations and have it read and considered.

INSPECTOR McLAUGHLIN:-

I wish to say to Hollow Horn Bear that I had in mind the Issue Stations near the Agency—Cut Meat, Black Pipe, etc., when I set the time for the council for next Tuesday, but I believe the suggestion that it be a day later is quite reasonable. The reason I thought that Tuesday would be better than a day later, was because my friend, Hollow Horn Bear, said that the Indians were so busy working, and I did not want to take any more time from them than necessary, but as both speakers have said, we don't want to do this "running". I don't want to hurry you but give you ample time, but after you consider the matter in your respective districts, you ought to come together here to talk the matter over in a council, so that I can be with you and answer questions. To delay holding our council until next Friday would be the end of the month and we could not get through with the council in one day, so I think that Wednesday, say at One o'clock, would be the proper time and we may be able to get through by Saturday.

[8] As to giving a copy of this bill to each district council, as suggested by Stranger Horse—it would take a great deal of time and I doubt if you would understand it properly, if you had it. It would be much better for you to send for me when wanting the terms explained. You have heard the bill explained by me this morning, and you doubtless understand the substance of it. You can now go to your respective district councils, return here next Wednesday and I will then turn the copy of the bill over to you. There will be young men in the council who can read it, and you can also call upon me to explain any portions not clearly understood by you. Stranger Horse suggests that I have money at my disposal and could furnish you with subsistence. The Department has advised me that there are no funds available to pay expenses in connection with these negotiations and therefore I refer you to your Agent. I have met many Agents in my travels among Indian tribes, some of very large stature, but none with larger hearts than your Agent.

If you have nothing further to say at present, we will adjourn the council to meet again at One o'clock on Wednesday afternoon, July 29, 1903.

Council adjourned at 11 o'clock, A.M. July 25, 1903.

Council reconvened at 4 o'clock, July 29, 1903, with Agent McChesney and about 130 Indians present.

INSPECTOR McLAUGHLIN:-

Louis Bordeaux, interpreting,

My friends, we meet today as agreed upon at adjournment last Saturday; you having requested the four day's adjournment that you might council among yourselves. I would have been pleased to see more of your people present today, but I will talk with those of you who are present. I have already explained the bill which is to be the basis of the new agreement, and you having been in council among yourselves the past four days, you are

doubtless prepared to give me an answer. If you are not prepared to give me a definite answer, you probably desire to ask questions on some of the features of the bill which you may not understand. As I told you in our first council, I [9] don't wish to hurry you, I want to give you ample time so that you may consider the matter and understand it clearly; but desire to conclude our negotiations as soon as possible.

Remember the question before you is the cession of the unallotted portion of your Gregory County lands, which was embraced in our agreement of two years ago; and while I do not wish to hurry you, I would like to have our business concluded without unnecessary delay. If you have not reached any conclusion and want information on any point, I will endeavor to make it clear to you. I am now ready to hear from you as to what the outcome of your council has been, and any questions you may ask I will answer to your satisfaction.

HOLLOW HORN BEAR:-

My friend, some days ago, I had a talk with you, the Agent and Inspector, we all feel that you are our friends, we regard you as we would members of our own tribe; we trust you as we would our own people. We are going to ask some questions and have you make answers to them. Two years ago, the 14th day of September, I came here to talk with you. You were here with an agreement at that time and you told us that if any clause of the bill was not acceptable, it would not be ratified. It would have to be ratified as a whole, or rejected as a whole. Did we not understand you to say that if the treaty was not ratified, we would have the land back again?

INSPECTOR McLAUGHLIN:-

The land stands just as it was before, that is the status of the land is just as before. Congress did not ratify the agreement.

HOLLOW HORN BEAR:-

The treaty was in twelve sections, and you told us that if three-fourths of the Indians did not consent, it wouldn't go, the land would belong to us. You got three-fourths of us to consent—it was not your fault, the Great Father has made a big mistake. If the Great Father made a mistake when he sent you to us with the treaty, and wants to take his money back, he can do so, and we will take our land back. You told us if Congress did not ratify the treaty, it [10] would be all right for us to take this land back, and we ask you to act for us and we depend on you to see that we get the land back.

BULL NATION:-

You remember what you said once before when you were here to make the treaty with us. If Congress don't comply with the treaty, the land comes back to us. I remember all this, and the Great Father stayed back on one side with his money and we stay back on the other side with our land. There is nothing more to do.

REUBEN QUICK BEAR:-

On last Saturday you were with us in council, and had the papers with you and read and explained them to us. You told us to go home and council with the Indians at home at the Issue Stations. Two years ago, you came here and made a treaty with us, telling us that if there was any clause in the treaty that Congress did not comply with, the land would be ours just the same as before. You know that we have decided to take the land and hold it, it belongs to us. We have decided that today.

LITTLE THUNDER:-

Here are all the Indians. We are poor, you know that. You told us that we could sell the land to the Great Father, and we would get lots of money for it, we would get rich. Congress did not comply with the terms of the treaty, and we have all come to the conclusion that we

take our lands back as they belong to us. We all feel that way about it.

INSPECTOR McLAUGHLIN:-

My friends, I wish you all to understand that every word that is being said by you and myself is being taken down by the stenographer. It is transcribed into typewriting, like this page, and will form a part of my report. It is sent to the Secretary and he is able to read all that is said here at this council. These eight pages are the transcript of our first two councils. I will read and repeat what I have said to you, taking the third paragraph on the fourth page. This has reference to why your agreement of two years ago was not [11] modified. (Reads paragraph which is interpreted by Louis Bordeaux)

Congress is willing to pay you the same amount as was provided by that agreement but in a different manner than that provided by the wording of that agreement. I will read to you what I said in our last council, every word of which is true. (Reads from minutes of council held on Saturday, July 29th.)

The Secretary will obtain the best price possible for the land ceded. I told you before that a lump sum of money would never again be stipulated for the payment of Indian reservation lands; and that all surplus lands that Indians were not using or did not need would be opened to settlement by Congress, and every statement that I made to you last Saturday, can not be truthfully contradicted by any person. I shall tell you nothing but the truth and will use no words that are misleading. A few of the important provisions of this bill have been questioned by certain persons here and the report circulated among your people that my presentation of the bill was not all true, and you have been told that I was not authorized or instructed to make such statements. I desire to read and repeat again, what I told you

in last Saturday's council and, as facts and truth, stand by same without fear of contradiction. (Reads from minutes of council held on Saturday, beginning: "I consider it a very nice compliment" etc.,)

As I told you last Saturday, It is not the wish of the Secretary or the Commissioner nor of the Congressional delegation from this state to legislate for the opening of that tract of land without first consulting you Indians. I was very much pleased with the agreement entered into with you two years ago, although you will recall that I met with a great deal of opposition when negotiating that agreement. I gave you a fair price for your lands and protected you in every provision of the agreement.

My friend, Hollow Horn Bear asked me if the treaty was now of any effect, it having failed of ratification. I wish to answer that.

You will remember that I said at the time that it required two [12] parties to every bargain, that you, the Indians of this Agency, were one party and I, representing the Government in the negotiations, was the other party, but that any agreement concluded by us, would be of no force or effect until ratified by Congress.

You did your part, you met the requirements of the Department by entering into the agreement with me for that part of your lands at \$2.50 per acre. Congress was willing to accept the price but demanded a change in the manner of payment. The status of the land is just the same as it was two years ago, but I am here to try to enter into a new agreement, from which you will receive as much for your lands as the agreement of two years ago provided, but the manner of disposing of it is different. I can not promise you any definite sum to be paid at certain times as was stipulated in your other agreement, but I am here to promise you every cent that the land will bring under the provisions of the bill.

My friends, you will remember that in years past, five and ten cents per acre was paid for Indians' land, and by the agreement of 1889 you received fifty cents per acre for all that was not taken within the first five years, but here is an offer of \$2.50 per acre for it. The entryman has five years to pay for it, in five different installments. Fifty cents when he enters the land, fifty cents at the end of the second year, and fifty cents each year following, and the last fifty cents must be paid within 5 years and 6 months after date of the entry. Any man who enters that land and fails to make any of the payments, will forfeit the land and the money he may have paid in, and the land will be sold again for your benefit.

Sections 16 and 36 of each township is donated to the state of South Dakota for school purposes; that is, two sections out of every township. This does not concern you, the payment therefor is made to you direct from the U.S. Treasury, but the payment for the land that is homesteaded does concern you. The Government collects from the homesteader and pays it over to you. The bill also provides that all land not taken by actual homesteaders at the expiration of four years [13] will be sold at public auction to the highest bidders at a price not less than \$2.50 per acre. It provides for the same amount of money for the purchase of stock cattle as the agreement of two years ago did; and all the rest of the money received from the proceeds of the sale of the land is to be paid to you as provided in the first agreement. My friends, I understand that it is doubtless difficult for you to understand this as I do, but I am here to explain it and make you understand it. There is a great demand for land at the present time in this country, and understand that under the late decision of the Supreme Court of the United States, there are no large tracts of land on any reservation that will remain long before being opened to

settlement. If the Indians have surplus lands that they are not using, and if they refuse to entertain a reasonable proposition and fair compensation for them, Congress will open them regardless of their wishes. It is the desire of the Secretary of the Interior and of the Commissioner of Indian Affairs, and many of your friends in Congress, that you receive the best prices that your land will bring but you will have to receive payment for them from the proceeds of the sale of the lands, and it is for you to consider this matter very carefully. I am here to negotiate a treaty with you and if there are any questions that I can not answer, I will telegraph the Secretary for instructions. The Secretary and Commissioner have your welfare at heart and desire to do what is best for you and I am here to try to effect an agreement that will protect you fully. I wish to say that when negotiating the treaty with you two years ago, I had some discretionary power, but I am powerless to make any change in this. But if there is anything in the bill which you do not like, I can submit it to the Secretary and ask for instructions in the premises. The Government demands the opening of Gregory County and it will be opened. If we can enter into an agreement that will be satisfactory to yourselves and acceptable to Congress, it will be best for you. If you refuse to negotiate and turn your backs on this, Congress can open your lands just the same. I do not wish to be [14] understood that Congress will take your lands without compensating you for them, you will doubtless be allowed what was provided in your agreement. In order to meet your wishes, some concessions might be made to you. It is possible that Congress might be induced to make certain concessions. It would be useless for us to conclude an agreement that Congress would not look favorably upon, and I know that any agreement entered into with you here, and approved by the

Secretary and Commissioner would be more apt to be ratified, even though it favored you more than a bill prepared in Congress and passed by that body, and I therefore regard it for your best interests that we conclude an agreement along the lines desired by Congress.

Each of the four speakers here today stated that they were ready to call the agreement off and retain their lands as they existed two years ago. In so far as the status of your lands is concerned, there is no question about that, your land remains just as before the agreement, but that tract will not long remain so. If we fail to make an agreement, this coming session of Congress may enact laws that will open these lands, and I hope to make an agreement with you that will meet the wishes of Congress.

I wish you to look at this matter in a very serious light. I hope that you will take a proper view of it. I want you to tell me any objections which you have to the bill as it is presented to you. If there are any changes that I can bring about myself, I will cheerfully do so, and if there is anything that I am not privileged to act upon I will refer it to the Secretary for instructions. It is impossible for me to know what is in your minds unless you express your thoughts. If there are any objectionable features, anything in the provisions of the bill that you do not like, I want you to state them to me.

HOLLOW HORN BEAR:-

I have lots of complaints to make. I am an Indian and have little wisdom but I remember what we have lost in the years past. I [15] want to ask questions about Gen. Crook's treaty. He said that the first three years the allotted land will be \$1.25. He told us that there was three millions of dollars in the Treasury of the United States to the credit of the Indians. For the fourth and

fifth years it was seventy five cents per acre, and all the rest of the land, good or bad was fifty cents per acre. There were twelve sections in the agreement that you made with us. One of the first things you talked to us about was to pay us. I have not seen any of the money yet. Of course, we ought to be paid before this, now two years are past, and no money yet. Where is that money? I guess the Government got it. I think there are some words in the new bill that you read to us that are covered up. I am afraid that if I sign this new treaty that you will take it from us and not give us any pay only the school land money. Now the white people will not take this land in four years, they will sit and wait for it to be sold at auction and then they think they will get it cheaper. When Gen. Crook made that treaty, the white people didn't take the land for \$1.25 per acre; they waited until it got cheaper. I can look at the past and know by that, that we will not get the money for our land. The land left over will not sell, the people will not take 160 acres of rough country. When we sold our land for five and ten cents per acre, we did not know how much an acre was, but now we have learned more, and know and remember about all these things. We can see that the Great Father has made immense money out of our lands. And now you come here and tell us that an Indian had a lawsuit and he got beat. The Indians here are not citizens yet. We can't vote for the President. If Congress opens our land, we will feel like prisoners within our own country. I have taken my allotment of land, and the Government gave me a Trust Patent, why does he not give me a deed that will last always and not only 25 years? The Great Father is without mercy on us. When a man speaks English, everything is decided in his favor. You ought to have mercy on us, we want to be good people. You say that this land will be opened up without our consent. That is

not right, the land belongs to us, and you ought to go home and tell the [16] Great Father so. Our treaty was not complied with, and we have great cause for complaint. When you came here before, I was in New York; and when I came back and saw the treaty, I knew that it was good and I told my people to sign it. I fooled myself and made a mistake with my people. The modification of the treaty tears it to pieces, it is of no effect, and we will keep our land, and the Great Father can keep his money. I have nothing against you and the Agent, Congress is to blame. The Great Father gave us the land for twenty five years, now he undoes that and opens up the land.

PICKET PIN:-

I want to say a little word. I am one of the chiefs of these Indians. If you had kept the other agreement that you made with us two years ago, we would consider this new treaty, but now we are going to keep our land. You can go home and tell the Great Father that we will not give up our land like this.

INSPECTOR McLAUGHLIN:-

My friends, I wish to say to you that I would not and do not take second place to any man in the U.S. in my desire to benefit the Indians. I have a great many friends among the Indian tribes. That friendship has been gained by friendly dealings with the Indians, and by always making true statements with no misleading words. I could come before you and say words that would please you, that would sound sweet to your ears, but if they were not true, you would learn to despise me for them, therefore I make it a practice to tell Indians the truth on all occasions. It is much better for you to know the truth about these lands, and when I told you that your unallotted lands in Gregory County might be opened without your consent, and in saying so, I told you the truth; but I did not say that such will be done.

I fully believe from your talk here today, that you have not considered the question I put before you. The only question before you to consider is the identical tract of land that you negotiated for two years ago. Your reservation apart from that tract is not [17] involved and is not affected by the question under consideration. It is the unallotted lands in Gregory County only. I believe that we could come to an agreement, if we only discussed the matter we should discuss. I would suggest that you appoint a committee of say about eight or ten men and come here and talk with me, and you could then explain the matter to the people in full council, so that you would understand it as well as I do. I am not feeling well today and am afraid I have not done myself justice in explaining the matter, but I wish you to consider the proposition among yourselves and not return to your homes, until you have reached some conclusion. Everything I can do for you in the premises, I will cheerfully do. Any change that you may desire to have made to protect your interests, I will consider and any reasonable concessions that you may request, I will ask the Secretary for instructions, but any concessions made must be such as to meet the policy of Congress and we must bear that in mind. I wish you to council among yourselves tonight, and come to see me tomorrow at ten o'clock. Do you consent to my proposition to meet me tomorrow at 10 o'clock?

INDIANS:-

Yes.

Council adjourned at 6 P.M. July 29, 1903.

Council reconvened at one o'clock on Thursday, July 30, 1903, with Agent McChesney and about 165 Indians present.

INSPECTOR McLAUGHLIN:-

I am pleased to see so many of you here today. This is

a larger gathering than we have had at our councils before, and I hope that you have come to some conclusion at your councils last night among yourselves, and I am ready to hear what your decision may be. Just before adjournment last night, I suggested to you the advisability of appointing a committee of eight or ten men to act for the tribe. I did not say that you should do so, but simply suggested it to you. You can act as you please in the matter, either discuss the question in open council or appoint a committee to act for you.

[18] TWO STRIKE:-

My friend, I am going to tell you what I think about it. We come here today as we came two years ago. You told us that you will give us \$2.50 per acre for the land; you took our names and went home to the Great Father. We have been waiting for two years to see what the consequence of this treaty would be. It has amounted to nothing. Now we hear the news that the price of \$2.50 per acre is done away with. You have shoved the land back to us and we will take it again. We don't want to sell the land to some farmers. We want to sell the land to the Great Father, and no one else. We are poor Indians, we are starving to death at the present time. I know that you white people want the land, and it is worth \$5.00 per acre and now that the deal is off, we are glad to have our land back again. If we make a new treaty, we want \$5.00 per acre for it.

HE DOG:-

The men here gave me power to speak for them. They chose ten men to speak at this council this afternoon, and I was one of them. I speak for them as well as for myself. What you promised us the last time you were here was not accomplished. We don't want to sell the land now and the Great Father can not have the land again. We are glad to get it back again.

HIGH PIPE:-

I am chosen to speak for my people this afternoon. What I say is what they think. We made a good treaty with you two years ago, with a good heart and all the Indians were satisfied, but since the treaty was modified, the people don't like it and don't want to sell the land to white people. We have the land. We will keep it. We have decided this.

THIN ELK:-

I was selected as one of the speakers and I am going to talk. You took the treaty home with you two years ago. Now that treaty was not complied with, so we are going to keep our lands.

[19] WHITE HAWK:-

You asked us for our land two years ago. You offered us \$2.50 per acre for it. Do you remember that? It was not complied with and the whole thing has fallen through with. The Great Father can keep his money, we will keep our land as it is.

BULL NATION:-

I will talk again today as I did yesterday. Two years ago you promised us \$2.50 per acre for the land, you didn't give it to us, so this treaty is all off.

REUBEN QUICK BEAR:-

The Indians told me to speak for them. This land we consider belongs to us Indians and the Great Father wants the land back because he has sent you here again. You told us two years ago that you had to have three-fourths of the Indian's consent. We gave that consent, and you went home with the agreement and then Congress changed it and sent it back to us again and you are here to talk about it. Before, you promised that the Great Father would pay us, now you say that the land will be sold to white people by the Government. You say that they will pay fifty cents when they enter

the land and fifty cents for the next four years. We don't like this new way; we don't want to sell to white farmers, and we won't do it either.

ALLEN NIGHT PIPE:-

I never have spoken to a large number of people before, but they have chosen me as a speaker. The Agent will remember that I have asked him about the selling of our land and I have asked him why we did not get the money as agreed. This agreement of two years ago was signed by three-fourths of the Indians with a good heart. It was taken home to the Great Father. The Secretary and the Senate was pleased with it. You told us that the Senate was pleased and passed the bill. You said that some of the members of the House of Representatives were pleased with it, but when it came to the full House, you told us that it did not pass. That was wrong. You said that members of the House modified this bill. That was wrong [20] again, and our hearts feel bad towards those that were not pleased with the bill as it was signed by us, but as it was not, we will take it back again. We will not sell for less than \$2.50 per acre and that to be paid by the Great Father. The land is ours, and we will keep it.

GRAY EAGLE TAIL:-

The Indians pushed me forward as a speaker and I have come to the front as they told me to do. The people in the past, have had me talk to the Agent for them. We sold the land two years ago. We have asked the Agent why the land was not paid for. We want that money before we die. Many of us have died in the past two years, who have had no money from this land. Many of us will die before we receive any money from the land, if the Great Father does not pay us.

REUBEN QUICK BEAR:-

Hollow Horn Bear is to make a speech but we want to hear from you before Hollow Horn Bear makes his speech.

INSPECTOR McLAUGHLIN:-

As the sun is hot, I will speak to you with my hat on. I wish to say to you that in the past the Government has purchased lands from the Indians and paid them directly from the U.S. Treasury. That has been the practice from the first treaty with the Indians up to quite recently, but Congress has decided upon a new system of paying Indians for surplus lands that they may have to dispose of; by paying them only what may be realized from the sale of the land. The bill which I have presented to you and which I hope to conclude an agreement in conformance with, provides for the same price which was promised to you two years ago, but instead of the government paying directly from the U.S. Treasury, it collects the money from the sale of the land and turns it over to you which is one and the same thing, and whatever is realized from the sale of the land, will be turned over to you; every cent, every copper. Any agreement that we may enter into for the sale of this land in conformance with [21] the requirements of Congress, will provide for the amount which was stipulated that the Government was to pay by your agreement of two years ago, but understand me, the agreement will not provide for the payment of certain sums at certain times. We can not make any calculations as to what will be paid each year, but it must all be paid at the end of five years and six months from the date of entry; and this assures you practically the same as was provided for in your former agreement, which provided for five annual payments.

I fear that this matter is not fully understood by you. I would have been pleased to have had the former agreement ratified, because I know that it was good for you people and the Government also; but as that failed of ratification, I am here to enter into an agreement which is similar to that of two years ago, except as to the manner

of payment; which manner of payment makes it impossible to state definitely what amount can be paid to you each year. My friends, it is almost two years since we negotiated that agreement for your lands, and what benefit have you received from these lands during that time? You have not received one cent from these lands. Your relatives and people who are living there, will be protected in their allotments, and it is only the unallotted portion if the tract that we are negotiating for. I feel that when we understand it fully, we can come to an agreement, but the agreement must be along the lines as provided in the modified bill. Remember you receive every dollar that the land will bring and I feel quite sure that the money which you will receive under the new agreement will be as much, if not more, than what you would have received under the agreement of two years ago, for the reason that the land can not be sold for less than \$2.50 per acre and the bill provides that any one who fails to make any one of the payments as they become due, will forfeit the land and all that he has paid. This land reverts back to the Government and is sold again, so that whatever is paid on land thus forfeited is that much more for you Indians than you would have received under the old agreement. There will probably be entrymen who can not [22] make payment, and all this money will be in excess of the \$2.50 per acre that you will receive. You have said that you want to call this deal off. You are not using good judgment in coming to that decision. Congress wants the land opened; the people of the country want the land opened, and now it is for you to make the best bargain you can for the land. It is of no use to you now, you are deriving no revenue from it now. You will still have as large a reservation as Pine Ridge after this is cut off. White men going into that country will build houses and make improvements and the value

of your land will be enhanced. Rumors have reached me that there are some provisions of the bill that do not meet the wishes of you people, and as I told you yesterday, I want to know what your objections to the bill are, and if I can do nothing in meeting your wishes, I will telegraph to the Secretary for instructions. I don't want you to say that the Government can keep its money and you will keep the land. I am here to make an agreement with you along the lines of the bill, and the delegation from this state is very desirous to have that country opened to settlement. The members from your state are your friends, and it is your duty to listen and consider the matter.

You want to drop the words, "Let the government keep its money and we keep our lands." Look at the matter in the daylight and not on the dark side of it. You have the land, you don't need it, and the Government wants to open it and now the question is what sections of the bill do you want to have changed to meet your wishes?

HOLLOW HORN BEAR:-

These last few days have stirred up my heart all around. You are treating us like General Crook treated us. It pretty nearly kills me. The Great Father wanted us to touch the pen and then he said he would take the land, but he did not do it. We understand the bill. I understand the bill and I have told my people about it. Our council two years ago was very good, why don't you protect us with that? You ought to say to Congress that they must ratify the treaty. This is your business to do that. The land in Gregory County is the best land that we have. We want to get the worth of it.

[23] We know that it is valuable as well as the white man. The two sections of land that the Government agrees to pay cash for, that is all that we will get out of

the land. When are we going to get our pay for that? Some of the land will wait for years and not be taken by any one. They will not take the land even at \$1.25 per acre in Gregory County, they will wait to get it cheaper. If the land is sold at auction, we won't get anything from it. You say that if the white man who enters the land does not pay for it the Government will take the land back again, and it will keep it too. You said two years ago that we would be given \$30.00 per capita for five years and two head of cattle to each person, but you see that it all falls to pieces. This new bill provides that you will issue cattle in October. You might as well give the cattle to us in the winter time, they will all die, we will have no hay for them. Have you the power to telegraph to the Secretary and find out about this?

INSPECTOR McLAUGHLIN:-

Yes, I have such authority, but there is no necessity for me to do so as yet.

HOLLOW HORN BEAR:-

If we sign this modified bill you take it home to Congress and they do not see fit to ratify the bill, then the sale is all off again, and we will get no money. We are afraid that you will do like Gen. Crook did. You told us that Congress had power to open up our lands without our authority. Will you take oath to this?

INSPECTOR McLAUGHLIN:-

I Will. (Rises and holding up right hand repeats the following)

The Supreme Court of the United States, from which there is no appeal, has decided that Congress has the power to legislate for the opening of Indian reservations without consulting the Indians. That the Indian is the ward of the Government, and the guardian may do what is deemed best for the ward, therefore Congress has the right to enact such laws without obtaining the consent of the Indians.

[24] This decision was rendered in the case of Lone Wolf, a Kiowa Indian. All officials bow to the decision of the Supreme Court; the President, Cabinet officers and Congress. The Supreme Court is the court of the last appeal. This is the final end of all disputed questions. The title of Indians to their lands is simply occupancy; and when Congress is convinced that Indians have more land than they can properly use, it may open such lands to settlement.

It is to conserve and preserve the three-fourth majority rule in your affairs, that the Secretary, the Commissioner and the delegation from South Dakota are desirous of effecting an agreement with you; and I hope that rule will never be broken among the Sioux Indians, but Congress can break this rule if it sees fit to do so.

HOLLOW HORN BEAR:-

Was not the decision of the Lone Wolf case given partly because he was self supporting? Gen. Crook told us that this money was deposited in the Treasury of the United States to our credit. Where is that money now?

INSPECTOR McLAUGHLIN:-

It is still there, and it is drawing \$150,000 per year interest. \$75,000 in cash and \$75,000 for school purposes. Every year the Sioux receives per capita payments from that interest bearing fund.

HOLLOW HORN BEAR:-

I have always thought this land belonged to us, but now since this decision, I believe that our land will be taken away from us.

INSPECTOR McLAUGHLIN:-

No, you are protected in that.

HOLLOW HORN BEAR:-

Then do I understand that Congress is going to open up our land without the consent of three-fourths of our people here. Is this true?

INSPECTOR McLAUGHLIN:-

I have not said that Congress would do so, but that it had the power and might do so, but I am sent here to try to make an agreement [25] with you that three-fourths of you will sign, to preserve that rule.

HOLLOW HORN BEAR:-

You go home and tell the Great Father we don't want to sell any more land to him. Before they take our land I will go home and cut some hay, so I can have some for next winter, and we will now break council and go home. (Indians all started to leave the council)

INSPECTOR McLAUGHLIN:-

I wish to say one word more, I have too much interest in you people to allow you to leave so abruptly. You ought not to act so hurriedly and thoughtlessly. You are doing something that you will be sorry for, I am here as your friend, I am not here to take anything away from you without full value therefor, and it is not proper for you to leave so abruptly without first giving the matter due consideration. I am here in your interest as much as in the interest of the Government, and I don't want any of you to feel that I would take any advantage of you, for I would not. I am prepared to enter into an agreement with you that is as good as that one of two years ago, but you have failed up to the present time to make any suggestions to me as to what changes you would want in the bill. You should state what part does not meet your wishes, tell me what changes you want, and I will see what can be done about it. I would like to have a committee appointed to meet with me to discuss the matter understandingly.

HOLLOW HORN BEAR:-

I have just told you some things that we objected to. The bill provides for a payment at the time of entry of the lands and then jumps two years without any

payment. After four years they will sell at auction to the people 160 acres. No one will buy it that way. No one wants 160 acres of that rough land that will remain, which is only fit for grazing purposes.

INSPECTOR McLAUGHLIN:

Do you mean by that that you object to the land being sold in tracts of 160 acres?

[26] HOLLOW HORN BEAR:

Yes. They ought to let a man buy as much as he wants to of the rough land that will be left by the homesteaders. They ought to sell enough to one man to range his cattle on, and it would be worth more to the purchaser in that way and a better price would be gotten for us by selling the rough grazing lands in that way. A railroad has been built right up to our lands there since you were here two years ago, and all lands there have increased in price and we want at least as much for that land as was provided in our agreement of two years ago, which can not be realized from the provisions of the bill you have presented.

The land that would be taken as homesteads by farmers would have to be sold for more than \$2.50 per acre to make up for the rough grazing lands which would not bring the price that the farming lands would.

INSPECTOR McLAUGHLIN:-

As your friend, I wish you to consider this matter further among yourselves, and return here when you have given the matter more careful thought. Will you do so?

Many Indians:-

Yes, but we can not return short of a week. The Agent is to pay us for labor a week from tomorrow and the following day, and we will meet you in council again that day, but not before.

INSPECTOR McLAUGHLIN:

I dislike to delay so long, but to meet your wishes, I

will do so; and we therefore will meet here in council a week from tomorrow as you request. The Council is now adjourned until Friday August 7, 1903.

Council adjourned at 4:30 P.M.

[27] Council reconvened at four o'clock, Friday, August 7, 1903, with Agent McChesney and about 350 Indians in attendance.

My friends, I am more than pleased to see so many of you here today; many of you present not having attended our earlier councils. We adjourned a week ago yesterday with the understanding that we would meet in council again today, it being understood that many of you who had not attended our former councils would be here today to receive labor money due you. Since our last council, I have visited Sioux Falls and had a very pleasant interview with Senator Kittridge. I telegraphed to Congressman Burke from Sioux City to try and make an appointment with him but he was obliged to go to Chicago and therefore I was unable to meet him. I had the twenty-six pages of the minutes of our former councils, up to the time we adjourned last week, with me and Senator Kittridge read them and was very much interested in same. I explained to him that some modifications would be necessary in the bill before it would be acceptable to you people, and I wanted to ascertain his views in relation to the modifications that he thought proper to concede in order to satisfy your wishes in the matter. I have given this matter a great deal of thought during my absence and since I returned today, and have been considering some changes which I think will meet your wishes. I have an agreement outlined which requires some filling in, and since my return I have been thinking about it and shall complete it tonight and read it to you tomorrow and will then know if it meets your wishes. The changes which will be made in the bill

will be based upon the last few minutes talk we had in our last council when Hollow Horn Bear stated the provisions in the bill which were objectionable to him and I presented the matter to you. Hollow Horn Bear objected to the bill providing for a certain payment at the time of entry, then jumping two years without any payment. The bill provides that all land not sold at the expiration of four years shall be sold at auction in not to exceed 160 acre tracts to any one individual.

[28] Hollow Horn Bear concurred in the land being sold in tracts of 160 acres each, but as many of such to individual bidders as they were able to pay for. That a man should be allowed to buy as much of the land as he chooses, provided his bid was the highest and he had the money to pay for the land.

I know that since our agreement of two years ago, a railroad has been built near your land, as was stated by some of your speakers, and that this will be of great benefit to those who will buy the land as well as a benefit to the Indians living in the Ponca Creek District. Your speakers also stated that the good land, the agricultural tracts, will all be taken at \$2.50 per acre and the poor land fit only for grazing purposes will be left after all the good land is filed upon, and this poor land will not bring \$2.50 per acre, therefore you demand a higher price than \$2.50 per acre for the agricultural land, because you want it to average you as much at least as was provided for in the former agreement, \$2.50 per acre throughout.

It would be useless for us to conclude an agreement that would not be ratified by Congress, and that the South Dakota delegation would not approve of; therefore I consulted with Senator Kittridge regarding the matter and obtained his promise of support to a modified bill that I think will meet your wishes.

Some of your young men came to see me the evening before my departure for Sioux Falls and talked of several matters, one of which was their desire for a provision in the agreement whereby the self-supporting men of the tribe might sever their tribal relations and secure the tribal benefits due them, and if it is your desire I will include such a provision in any agreement we may conclude.

As I told you in our former councils, that county will, without doubt, be opened at the coming session of Congress and I am willing and ready to enter into an agreement that will cause you to realize as much out of those lands as you would have realized if the former agreement had been ratified.

[29] There are a great many persons here today who have not been present at any of our former councils. Your relatives who have attended these councils have no doubt explained to you the provisions of the bill, and I deem it only necessary to say to you that these negotiations embrace the identical tract of land that you ceded by your agreement of two years ago, the same tract, nothing additional. The bill provides the same price per acre as provided by the former agreement, that is the land can not be sold for less than \$2.50 per acre, but I can not state definitely what amount you will receive annually. The land is sold to homesteaders at \$2.50 per acre, every cent of which the Government will turn over to you. The Government acts as trustee and all that is realized from the sale of the land each year, until fully paid for, will be paid to you annually.

I have just consulted with your agent as to the most suitable hour to have our meeting tomorrow and have concluded upon two o'clock as the hour to assemble. I will then have the agreement, as I have it in my mind today, written out, and ready for your signatures, and I

believe that we can reach an agreement which will meet your wishes. There is only one question between us at the present time, the price of the land. You insist on receiving a higher price for your agricultural land than \$2.50 per acre, for the reason, as you state, that the poorer lands, the grazing tracts, will be left over, and when sold at auction will not bring as much as the agricultural land.

The other matters that you have contended for in our councils, I believe that I can meet to your entire satisfaction. I will be very careful to see that the amount provided for in this agreement in the aggregate will fully equal the amount you would have received had the former agreement been ratified. This is all that is necessary for me to say to you. I will have the agreement ready tomorrow and will read and explain it to you section by section, and I hope that all of you here assembled today, will remain until tomorrow, for this is a matter that is of great interest to you. If any of you not at our former councils wish to ask any questions, I am here to explain.

[30] HOLLOW HORN BEAR:-

I have a few words to say. Don't cut us to pieces, we came here to have a talk. You come here to meet the different chiefs more than the other people. You talk with the chiefs, and they talk and advise their people. I thought when we come here today that things would be all fixed up for us, as we told you before of the things we don't like in the bill. We thought that you would be ready to tell us what you could do to help us.

You said that some of the young men that don't draw rations came to you the other day and wanted to get what was due them from the tribe and then leave us. We don't like that. The Great Father is trying to civilize the people. We got up a petition and sent to the Great Father in regard to this matter, and if you put this in the

agreement, we consider that it would be setting this petition aside. You can see all these people here, we don't get rations. If you are going to make a law, it concerns us all. In the past ten days we got some rations, we got seven and a half pounds of beef for ten days. I wonder what is going to become of us in the future. We are anxious to hear what you have prepared to tell us. You ought to tell us now. I asked you to tell the Great Father that we wanted him to buy our land himself, and that is what we want. We don't want to sell our land to white people and have them wait five years to pay us \$2.50 per acre. You have told us that there will be some cattle issued to us in October. We want them issued to us in the spring instead of October. I am not saying this for myself, I am saying it for all my people. We came here to meet you today and hear what you had to say to us and then go to our camps and talk about it. We want to hear the provisions of the new treaty that will suit us, so we can go and talk about it with a good heart like when we are courting women. We know that you are our friend, that you are a friend of the Indians, that you have a family of Indian blood, and when you work for us, you work for them also. We are anxious to hear from the Secretary and the Commissioner, you have told them what we want.

[31] Yesterday I had a long talk with my people. I told them to honor you and the Agent as much as possible and consider all that you say to them.

INSPECTOR McLAUGHLIN:-

My friends, you understood me to say that cattle would be issued to you in October, it is a misunderstanding, for I never made such statement. The bill provides that you should receive the same number of cattle that the former agreement did, that is, that \$250,000 should be expended in the purchase of cattle, this would give about two heads of cattle to each person.

The bill does not provide the time of year that you should receive the cattle, that is discretionary with the Secretary, Commissioner and Agent, and none would be delivered later than July; I think May and June would be the months that you probably would receive the cattle.

I said that one half of the money received from the sale of the lands the first year would be paid you in cattle and the other half in cash. The bill provides that there shall be an accounting and settlement in the month of October of each year, that is, there shall be an annual settlement with you for all money received from the sale of the lands in the month of October of each year until the lands are fully paid for. I said nothing about cattle being delivered in the month of October. For instance, in case we should enter into an agreement and Congress should ratify it, the land would probably not be opened until July next, and the money would be paid immediately after the land was opened and entry of same made. The first payment would be made as soon as practicable after it was paid by the entrymen. In the month of October you would receive one half of all the money paid in, but the other half of the money would be invested in cattle, which you would not receive until the following spring.

My friend, Hollow Horn Bear, said that he thought that I would return with the paper all written out. It is a very difficult thing to write out an agreement of so great importance, and I was not able [32] to do so, while on the train or on the stage, but waited until I should return here, and have a quiet place. I will explain what the agreement will be that I propose to read to you tomorrow. It must be along the lines provided in the bill as far as the payment is concerned, but the amount of money that you will receive annually, can not be stated in the agreement. For all the land taken by the settlers

under the homestead act, I will provide that you receive at least \$2.75 per acre for it, and that the homesteaders shall pay at the time of entry seventy-five cents per acre and then forty cents each year, the following five years; which means that you will receive \$2.75 per acre for all the good land, the agricultural land. The forty cents per acre annually, that you will receive for five years will amount to \$2.00 and the seventy-five cents that you will receive at the time of entry will give you \$2.75 per acre for your farming lands. As I stated before, if any man makes entry on a piece of land and fails to make a single one of the payments when it becomes due, the land is taken away from him and all that he has paid is forfeited. The amount that such entrymen may have paid goes to you, and you will receive this money in excess of the \$2.75 per acre that will be provided for in the agreement which I will submit to you tomorrow. This land thus forfeited, by the entryman failing to make payments, goes back to be again disposed of by the Government who will sell it over again at the same price.

I feel quite confident that all the land that is suitable for agricultural purposes will be taken within ninety days after the tract is declared open, but in that section of the country there is a great deal of rough land that can never be cultivated profitably, therefore to protect you people, it is necessary for you to obtain the highest price possible for the agricultural lands. The question raised by you in our last council that any man should be allowed to buy as much of the rough grazing land as he is able to pay for, and not be limited to 160 acres appears to me quite reasonable, and it is no doubt true that if a man were allowed to purchase say eight or [33] ten quarter sections, it would find a quicker market and bring you a higher price than if purchasers were limited to tracts of 160 acres only. I believe that every foot of land would be

sold if disposed of in this manner, and you would realize all that the land would bring, while if it were sold in small tracts and only 160 acres to an individual, there might be some that would not sell at all. This was the particular point that I talked with Senator Kittridge about, and he said that he would do his best to have Congress ratify that part of the agreement, for he thought it only fair to you people. Remember that Sections 16 and 36 in each township, aggregating 28,000 acres, is paid for by the Government at \$2.50 per acre direct from the U.S. Treasury; that money is available immediately after the land is opened. Also three tracts of land, one for a Catholic Mission, something less than 80 acres, and two tracts for Congregational Missions, of 40 and 80 acres respectively, or little less than 200 acres in all, is also paid for directly from the U.S. Treasury: The 28,000 acres of land for school purposes, that is, Sections 16 and 36 in each township, will amount to a little over \$71,000 which becomes immediately available after the opening of the land. All the rest of the land not taken by homestead settlers at the expiration of four years, will be sold at public auction. I will prepare the new agreement that I will submit to you tomorrow in such a way that it will meet all objections to the bill, as you have expressed yourselves. The only question is the price of the land. In order to be understood, remember that you do not receive cattle in October. You will receive cattle in the spring; in the month of October there will be a settlement and the money on hand then disbursed and paid to you.

I think I have made myself understood and you should certainly be able now to talk this over intelligently, and come back tomorrow at two o'clock, and I will have the agreement prepared. After I read the agreement and explain it, should there be any particular point that you object to, it might be possible to change it to meet your

wishes. This agreement must be prepared to conform to the [34] general policy of the Government, at the same time, I will prepare it so that no words will have a double meaning, and nothing covered up. That cattle would be delivered in the month of October, is not intended and I don't want that impression to get out among you people. This is all I have to say, and we will adjourn to meet in council tomorrow afternoon at two o'clock. Council adjourned at 5 o'clock, P.M. August 7th.

(Hollow Horn Bear speaks to Indian assemblage, not interpreted)

Council reconvened at 2.30 P.M. Saturday afternoon, August 8th, 1903, with about 350 Indians in attendance.

INSPECTOR McLAUGHLIN:-

Thomas Flood interpreting,

My friends, according to my promise made to you last evening, I am prepared to read the agreement which I have written out to submit to you. I will hand one copy of the agreement to your Agent and one to the interpreter. In case we sign an agreement, this one in my hand is the one that I will forward to the Secretary. I will read it section by section so that it can be fully interpreted, and that you may be able to understand it fully. The first article is exactly the same as Article I in the agreement of two years ago, but I will read it.

(Reads prepared agreement to the Indians assembled, which is interpreted as read).

My friends, I have prepared this agreement with a great deal of care. Your interests are well guarded, not a word in it with a double meaning. I have made the modifications in the different clauses of the bill which you did not like, and this agreement has been submitted by me to Senator Kittridge and he said that he would give it his hearty support. I allowed you Twenty-five cents more per acre than the former agreement provided for, for the

reason that there is a great deal of rough broken country, only fit for grazing purposes, and will not sell for so much as the agricultural land; therefore I have increased the price of your farming land. Now remember I have not made any promises as to the different amounts of money that you [35] will receive annually, but I have made what I consider a conservative estimate. The school sections in each township, that is, sections sixteen and thirty-six amount to 28,508 $\frac{68}{100}$ acres, which will be bought by the Government and paid for from the Treasury of the United States, and will amount to \$71,271.70. The Mission tracts embrace 198 $\frac{57}{100}$ acres which at \$2.50 per acre amount to \$496.67, making a total of \$71,768.37 which you will receive direct from the U.S. Treasury. This leaves 386,473 $\frac{89}{100}$ acres to be thrown open to settlement. I have estimated that there will be 300,000 acres which will amount to \$825,000.00: leaving 86,473 $\frac{89}{100}$ acres to be sold for grazing purposes, at auction, and I have estimated that this will bring \$2.00 per acre, which will amount to \$172,947.78. According to my estimate the total amount of money that you will receive from the sale of the lands thrown open to settlement will be \$1,069,716.15.

The terms of this agreement which I have submitted to you this afternoon, provides that the first payment to be made at the time of entry shall be seventy-five cents per acre and the 300,000 acres as estimated, which the first payment of seventy-five cents per acre will be made upon, will amount to \$225,000.00, and the amount paid for the school and mission lands direct from the U.S. Treasury would amount to \$71,768.37, making a total of \$296,768.37 that would be available for the first payment, one half of which will be paid in case, and one half in cattle. I believe this to be a conservative estimate and that this amount is likely to be increased rather than

diminished. If these figures are realized the first cash payment would be \$148,384.18, with cattle for a similar amount.

At the end of the first year you would receive forty cents per acre on the 300,000 acres which would amount to \$120,000.00, at the end of the second year you would receive forty cents per acre on the 300,000 acres which would amount to \$120,000.00. At the end of the third year, you would receive another payment of forty cents per acre, which would amount to \$120,000.00 and at the end of the fourth year [36] you would receive forty cents per acre on the 300,000 acres, which would amount to \$120,000.00, and also at this time all the land not having been entered under the homestead law will be disposed of to the highest bidders for cash, and I have estimated that it would bring \$2.00 per acre and that there would be 86,473 $\frac{89}{100}$ acres left unsold, which if sold at the price named would amount to \$172,947.78, which added to the \$120,000.00 would make a payment for you at the end of the fourth year amounting to \$292,947.78, and the last payment to be made within six months after the expiration of the fifth year amounting to \$120,000.00, or the last two payments might be equalized, and give you an equal amount each of the last two payments.

The agreement provides that you shall receive \$250,000.00 in cattle or one half of the receipts until the \$250,000.00 has been expended in cattle, therefore as estimated by me, you would receive at the first payment \$148,384.00 worth of cattle, and a similar amount in cash. At the second payment, which would be at the end of one year from date of entry, you would receive \$60,000.00 worth of cattle, and at the end of the second year you would receive \$41,616.00 worth of cattle, which would expend the \$250,000.00 provided for

cattle, and after the third payment at the end of the second year, all the payments would be in cash.

I consider my estimate very conservative, and I believe that the amount that will be realized from the lands will be even greater than I have stated, but I do not wish to estimate too high and mislead you in any way or make it sound flowery. On this estimate I have based my calculations to figure out what amount of money you would receive when the first payment was made on the land. You are to receive seventy-five cents per acre for the lands taken under the homestead law, which as estimated would amount to \$225,000.00, and the school and mission tracts paid for directly from the U.S. Treasury would amount to \$71,768.37, this latter would be paid at the time the lands were opened, and this would make \$296,768.37 available for the first payment, one half of that to be expended in the purchase [37] of cattle and the other half to be paid in cash. As estimated by me the six payments added together would make a total of \$1,069,716.15 realized from the sale of the land, or about \$30,000.00 more than you would have realized from the agreement of two years ago.

My friends, as I told you before, there has been very little discretionary power allowed me in these negotiations. I was detailed by the Secretary for this work, and instructions were prepared for me in the Indian Office, and I was directed to negotiate an agreement along the lines of the bill as explained to you in our councils. There were some portions of that bill which you were not satisfied with, and I made a trip to Sioux Falls to confer with the delegation from this state, and see if they would consent to have certain modifications made which you thought you were entitled to. I have made all concessions possible in the modified bill read to you, and I would not be justified in adding another word without instruction

from my superiors, and as stated to you in several of our councils, it would be useless for us to conclude an agreement, that the Secretary and Commissioner would not approve of and which would not be ratified by Congress. I have prepared the agreement very carefully, and your every interest is protected in the wording of each section. This agreement is very different from the bill I presented to you. Every provision is much more clearly worded and your interests better guarded, but the land is sold and paid for as provided in that bill, which is a new policy. The agreement which I submit for your consideration is similar in every respect to that of two years ago, except you have to wait for the sale of the land to receive your money, and in addition to the \$2.50 per acre, provided in your agreement of two years ago, twenty-five cents per acre is added for the agricultural lands. I have endeavored to explain the different sections of the agreement very clearly, and I am sure you all understand it. If any of you wish to ask any questions I am prepared to answer them.

HOLLOW HORN BEAR:-

There are several questions I want to ask. In the first [38] place I wish to say that you and the Agent are our friends, and we talk to you with a good heart. In Article VI there is something I would like to ask you about. You say that when the white men come on the land, the Great Father has nothing to do with the payment of that land.

INSPECTOR McLAUGHLIN:-

He has all to do with the land. He is the trustee for the Indians and until the last cent is paid he has possession of that land, and until he issues patents to the settlers, the land is in his possession.

HOLLOW HORN BEAR:-

Suppose the people do not take that land what will become of it?

INSPECTOR McLAUGHLIN:-

That is not possible. The land will be taken within thirty days, that is, as fast as the Land Office can take care of it. You, Hollow Horn Bear, have doubtless heard that when the land was about to be opened two years ago, there were thousands of people in close proximity, ready to go on the land, and there will be the same rush again.

HOLLOW HORN BEAR:-

If that was the case, the Great Father should have bought it from us.

INSPECTOR McLAUGHLIN:-

I have explained so many times that it is the policy of the Government to act as trustee in future for such lands and sell them for the Indians, but not to pay for them out of the U.S. Treasury; and only from the proceeds of the sale of the lands.

HOLLOW HORN BEAR:-

We are Indians yet, and we remember the laws that have been made for us. The Great Father has made a law that there must be three-fourths of the people consenting before any action shall be taken by Congress. If they will consider that law, then should not open that Gregory County without our consent. If they do, I shall [39] feel like a prisoner in my own country. Now, my friend, you have your doubts about this, you can not get up here and say before all these people, that we will derive as much money from the sale of these lands under the present agreement, as we would have received under the former agreement. You can not say that we will receive as much at the end of one year or two or three years.

INSPECTOR McLAUGHLIN:-

No, I can not, but I can say that I believe in the end you would receive at least as much, that is, at the end of five years.

HOLLOW HORN BEAR:

The Great father stands good for the school sections, that much money we would get out of the lands, but that is all the money I see in sight. The balance of the money is not in sight. When the Great Father agreed to buy the land the other time, he took it all and was to pay for it, and I said that that was a good agreement. This money for our land makes me think of the meat that we get these days. We get meat to last us ten days, I try to make it last that long, but it will only last me five days. I can see that the Great Father is going to pay for the school sections, but the balance I can not see at all. If the Great Father had sent you this time with as good an agreement as before, we would be very glad to hear it. I don't like this agreement, and I don't believe you do either. As I said before if the Great Father don't want to pay for the land, let him keep his money, and we will keep our land. There is another thing. You say in this agreement that the white men are put in with the Indians, just the same. I don't like that. When you come here with a treaty and want to get it signed by three-fourths of the Indians, you tell us that the mixed-bloods are just the same, that they are Indians, and you have them sign their names as Indians, and then when these mixed-bloods want to start a store or a meat shop, the Agent tells them that they will have to get a license. You used these mixed-bloods as a tool to get signers for your treaty, and when you are gone they are no better off than before.

[40] The reason that I speak this way to you is not because I have anything against you, but the people here are poor, and the Great Father ought to have mercy on us and try to help us. The Great Father tells us that he wants us to become like white men; that he wants us to become citizens, and when some of these young men want to become citizens and get their rights, they tell the

Agent so, he writes a letter and sends to the Commissioner and that is the end of it. Now you have attached this to this agreement, but Congress will throw that part away.

INSPECTOR McLAUGHLIN:-

They can't do that. It must be accepted as a whole or rejected as a whole.

HOLLOW HORN BEAR:-

I will use some words that you said to us before. These people accepted the last agreement, you took it to Washington; it pleased the Commissioner and Secretary and the Senate and part of the House but the full house threw the agreement away. They took the good words away and put in what they wanted. When you first came to tell us of this agreement, the Great Father caused you to make a mistake.

INSPECTOR McLAUGHLIN:-

I made no mistake at that time. But since then the Government has adopted a new policy in paying for Indian lands. I am pleased to know what is in your minds.

HOLLOW HORN BEAR:-

I think that is all that I care to say in regard to this. (Two Strike speaks, not interpreted. Red Hill speaks, not interpreted).

GHOST BEAR:-

Two years ago, you came here to make a treaty. I spoke some words to you at that time. I told you all that you said I would keep in my mind. Now I have kept those words until you have come again.

[42] by the people of this Agency, and I would not knowingly commit a single act that would lessen the friendship. It is for you to decide whether you will ratify the agreement by signing your names thereto or not.

WHITE WASH:-

I was not here when you came two years ago to make that treaty. When I came back I heard that you had made an agreement with the young men and they had signed, and I have always been thinking about it for two years now. If the Great Father had gone ahead and carried out that old agreement, it would have been all right, but we don't care to have anything to do with this new bill. We got nothing out of that other treaty, and many of the Indians have died waiting for their money. I think many of us will die before we get any money out of this land. I want you to go home with this new bill and tell the Great Father that it is not right. You ought to go home and get it fixed.

LITTLE THUNDER:-

My friend, I have some words to say to you. You know that in the past, we have been throwing our lands away for nothing. We had some land that we thought would be of some benefit to our people, the men, women and children. Our young men have children and they are coming all the time, where are they going to get land if the white people take it all? There are three things that I don't like in this bill.

HIGH PIPE:-

My friend, I have this to say. This poor old man, his name is Two Strike. He wants me to speak for him. This man has children and grand children. He wants us to consider this matter well for his people and children. There is no surplus land. He wants his children and his grand children to become owners of this land, and does not want to sell it. The Great Father in his great council

has torn our agreement all up. Two Strike wants his children to have \$5.00 per acre for this land. These are the words that Two Strike [43] wants to tell you, and that he believes in the three-fourth rule.

QUICK BEAR:-

I am an old man and have not much to say to you. I came here today to see you, and I think it is my duty to say these words to you. You came here before and you wanted our lands at \$2.50 per acre. At that time we wanted to sell the land to the Great Father, and if our agreement did not suit the Great Father, you should have returned sooner to tell us. We waited two years. Now we know that the land is valuable, and we want \$5.00 per acre for it. Two years ago, the Great Father could buy that land for \$2.50 but now we want \$5.00 for the land or we want nothing at all. This is all that I have to say about it.

BIG TURKEY:-

I have not much to say. The agreement that you made two years ago, that agreement did not stand, and I think that you did not try to support that agreement as you should. There have been times when we have been fooled, and I don't want to touch the pen again.

YELLOW HAIR:-

I am not your friend, you are my uncle. I was raised by a white man. I am afraid of this new treaty. It is my opinion that if we did sign it, you would back out again. You did not carry out your agreement promptly. Then another thing, there are many children being born, and where will they get their land? We will soon be crowded close together, and will be stamping on each other. These children ought to have land before we give land to white people. If you had carried out the former treaty, we would have been rich at the present time. I know that you are a good man, and you have been long among us

people. I want you to go back and talk it over with the Great Father and then come back again to see us if you wish to.

HE DOG:-

You remember that you were here before. Do you remember what you said to us? When you were here before, I told you that I wanted you to come back again with a good heart. All the people here today [44] are considering the matter and they told me to do what was best for them. I am ashamed to say that I touched the pen before, and was fooled. I won't sign your paper this time, and be fooled again.

INSPECTOR McLAUGHLIN:-

My friend, He Dog, has reminded me of something I wanted to speak of. He and many others will remember that when I was here two years ago, there was opposition to the agreement which I submitted at that time; more opposition to that agreement than there has been to this one. You will remember that there were five or six hundred of you here and that you broke up the council and all started off evidently intending not to listen to me further; but I called you back, and arranged with some of your leaders to have our next meeting in the school room. The reason that I did so, was because I knew that the agreement was for your best interests. It allowed you a good price for your land, and was liberal in every provision. Very few of you regarded it favorably when I first began talking with you about it, but now nearly every one of you who have spoken in council have said that it was a good agreement. I had 1,031 signatures to that agreement. I have explained to you in our former councils why that agreement was not ratified, and that these negotiations are for the same tract of land: I feel quite confident that the agreement which I have prepared will cause you to realize \$30,000.00 more than you

would have realized from the first agreement; but the manner of payment is different, and it is difficult for you to understand. I can not promise you that you will receive a certain amount of money each year at a certain time, as was provided in the former agreement, but I am confident that in the aggregate, at the expiration of five years, which was the limit of the other agreement, you will have realized more out of your land than you would have realized from the former agreement. I am not here to force you to accept this agreement. Your interests are well guarded, and it is for you to say whether or not you will accept it.

As far as I am individually concerned, it is all the same to me whether you accept this agreement or not. My salary goes on just [45] the same, and therefore I hope that you will decide upon what is best for yourselves and act accordingly. I have said that I do not want to hurry you. This is now the sixteenth day since the opening of our first council, and I feel that I would not be justified in remaining longer, holding councils and coming to no conclusion. If you are ready to accept this agreement, it is ready to be signed. If you are not ready and willing to sign the agreement, it is useless for me to remain longer. I will report the result of the council to the Secretary. The Secretary might conclude to send the papers back and might not, but remember I have told you before, I feel confident that the tract of land will be opened at the coming Session of Congress and I hope that it will be opened with your consent.

HOLLOW HORN BEAR:-

You have nothing more to say on your part, you have said what you have to say. I think we ought to have one more council, and I will get my people together tomorrow, and then we will decide whether we will accept it or not. I have been looking at this book in my hand, and

find that when we talked of selling our land before, some of them wanted \$5.00, \$6.00, \$10.00 and \$15.00 per acre. There were 1031 people that touched the pen then and therefore I want my people to get together tomorrow, and we will come to some conclusion and then come and tell you what we have decided. I think it would be all right for us to hold a council on Sunday and talk about it in a quiet way, and we will not dance.

INSPECTOR McLAUGHLIN:-

You can consult among yourselves tomorrow, and then let me know what your decision is on Monday. What time can you meet?

HOLLOW HORN BEAR:-

Monday morning is Issue day, but we could meet at two o'clock on Monday afternoon, August 10th.

PULLS THE ARROW:-

I object to this agreement. We want \$5.00 for our land, or we won't have anything. I represent the votes of 55 men in Cut Meat District. We will not stay to sign this agreement. We are going home [46] now, we will not wait for Monday.

IRON WING:-

I am going home. I want \$5.00 per acre or I want nothing.

Council adjourned at 5.50 P.M. Saturday afternoon, August 8th.

Council reconvened at two o'clock, August 10, 1903, with Agent McChesney and about 130 Indians in attendance.

TWO STRIKE:-

I don't want these people to sign today. I want you to go home and make a report to the Great Father that we want \$5.00 per acre, and then return again to us, and we will meet again to talk about it. We are poor and hard up and need all the money we can get out of the land.

WHITE WASH:-

My friend, today I say a few words to you again. This old man that you see before you is nervous. If I had kept account of the times I have been fooled by white people, it would stack up as high as the sky. I have been here a good while and know that the land is valuable, therefore whatever you have brought to us to consider about our land, I have taken an interest in. I don't want anything to do with the paper you have brought with you this time. I won't sign it. It don't suit me. You go back to the Great Father with what you have brought.

INSPECTOR McLAUGHLIN:-

My friends, we have met here today at the hour appointed for us to meet when we adjourned last Saturday. That adjournment was at your request to give you time to consider the agreement which I explained to you last Saturday. There was a large gathering here last Saturday, nearly four hundred people, and I am sorry to see so few of you present today. I see many of you here that I believe are opposed to the agreement, and many of those favorable to the agreement have returned to their homes. I believe that many of those in favor lacked the courage to come here today, but, my friends, those who are friendly disposed towards the agreement recognize what is best for [47] you people. I have taken all pains to explain this matter to you, in a way you can not fail to understand, and I am quite confident that you do understand it, and I regard it unnecessary to discuss the matter longer for the reason that those of you who have made up your minds not to sign would not be changed by anything that I might say and my powers of reasoning along these lines is about exhausted.

I am not going to force you to sign, but simply invite you to do so. I have signed the paper, it is here for your signatures, if you desire to do so, and as I said in the

beginning, whether I secure the necessary number of signatures or not, we part as friends just the same as formerly. The agreement has been carefully prepared and protects your interests fully, and it is now ready for any one who assents, to attach his signature. One word more and I am done. Any one desiring to sign this paper, must be allowed to do so without coercion or intimidation on the part of those opposed to the agreement. That is all.

REUBEN QUICK BEAR:-

I would like to tell you something about the council we had yesterday. You say that you have explained this matter to these people, and we took the matter under consideration yesterday. That was what the council was about. At that council there were representatives from different Issue Stations and different camps. At that council I was president and after taking the paper that you had read into consideration, I asked the council to vote on it. Six of the men there voted for the agreement. All the other representatives from different camps voted against it. The people have gone to their homes leaving their representatives to vote against the treaty. The reason that these people returned to their homes was because of work. It is the time when there is much work to be done, and they went home knowing that their wishes would be reported to you here today. My friend, we wish you to go home with your paper and we will go to our homes as the owners of our lands.

[48] HOLLOW HORN BEAR:-

I would like to ask you something. You come here with the law and you tell us that you have little authority, discretionary powers. Now you tell us that you have added twenty-five cents per acre to the price of the land. Have you the necessary authority to promise us that?

INSPECTOR McLAUGHLIN:-

I have the promise of Senator Kittridge and Congressman Burke to support me. Their word is as good as if it were written on paper.

HOLLOW HORN BEAR:-

Do these men work in the Congress and the Senate both?

INSPECTOR McLAUGHLIN:-

One in Congress and one in the Senate.

HOLLOW HORN BEAR:-

Do you think that this agreement will ever be ratified?

INSPECTOR McLAUGHLIN:-

They both assured me that they would do all they could, and I believe that the agreement will be ratified.

HOLLOW HORN BEAR:-

Then I will put that down in my book. (Writes in book). Another question that I want to ask. The mixed bloods from '68 to treaty of 1889, are they recognized as full blood Indians?

INSPECTOR McLAUGHLIN:-

They have been recognized as Indians, having all the rights of Indians.

HOLLOW HORN BEAR:-

Do you think and will you stand by what you have said in regard to the self supporting Indians becoming citizens, that is, will you say that this agreement will give the self supporting men their rights, and make them citizens?

INSPECTOR McLAUGHLIN:-

I said that if part of the agreement is rejected, the whole agreement stands rejected. No change can be made in the bill without coming back to you for your concurrence. This agreement will be [49] ratified or rejected as a whole.

HOLLOW HORN BEAR:-

My frield, I want to tell you something else. If they tear this bill to pieces again without asking me, I am going to take a knife and kill myself. I consider that you have given your word on this matter, that you have given your word as a man and if you stand up here and do not speak the truth to me today, I am going to kill myself. The Great Father takes the law in his hands many times and throws me over. We are not using that land, and you are trying to get it from us.

INSPECTOR McLAUGHLIN:-

Yes, but we are offering you a good price for the land. I am here to negotiate for the lands in Gregory County, nothing more.

HOLLOW HORN BEAR:-

All the Indians here want to remember what you have just said.

INSPECTOR McLAUGHLIN:-

I am not fearful of that, for I always tell the truth and a man fortified with the truth is always strong.

HOLLOW HORN BEAR:-

The Great Father is going to buy some of the land himself. Will every cent that he pays for the land come to us at the time of the first payment?

INSPECTOR McLAUGHLIN:-

Yes, every cent of the money paid for the school and mission tracts.

HOLLOW HORN BEAR:

About how much would that be for each person?

INSPECTOR McLAUGHLIN:-

It would be about \$14.00 per capita for the money derived from the sale of the school and mission tracts. And the money derived from the first payment as I have estimated would amount to about [50] \$29.00 per head.

HOLLOW HORN BEAR:-

If you take this home and it is not ratified, will you be ashamed to come back here again with another paper and talk to us?

INSPECTOR McLAUGHLIN:-

No, I would not as it would not be my fault, but at the same time, I believe that it will not come back for your concurrence in any changes, for the reason that the agreement conforms to the policy of Congress. The objections to the former agreement was not on account of price, but to the manner of payment.

WHITE HAWK:-

My friend, I want to say that this paper does not suit me, and I won't sign it.

GOOD BIRD:-

My friend, you told us that if this paper does not suit us, we did not need to touch the pen. It does not suit me, and I won't touch the pen.

INSPECTOR McLAUGHLIN:-

I don't wish to consume any more time with speeches. The paper is ready for you to sign, and you must determine, each for himself, but I would like to have you sign, because it is for your best interest.

(Hollow Horn Bear then came forward and signed, and was followed by others, until ninety of those present had signed the agreement, whereupon the council was adjourned sine die.)

I hereby certify that the foregoing is a true and correct transcript of the proceedings of Councils held by James McLaughlin, United States Indian Inspector, with the Indians of the Rosebud Reservation, South Dakota, from July 24th to August 10th inclusive, 1903.

[Rear Coverleaf]

Rosebud Agency, S.D.

August 14, 1903.

Assistant Clerk.

Minutes of councils held by James McLaughlin, U.S. Indian Inspector, with the Indians of Rosebud Agency, S.D. from July 24th to August 10th, 1903., in reference to the cession of their unallotted lands in Gregory County, S.D.

[#13A]

[Excerpt from Report of the Commissioner of Indian Affairs, 1901. Letter dated August 15, 1901 from the Superintendent to the CIA]

[371] The Indians living on the Rosebud Reserve belong mainly to the Brulé Sioux band, and the annual census taken at the end of June last gives the following results:

Males over 18 years of age	1,368
Females over 14 years of age	1,628
Males under 18 years of age	1,010
Females under 14 years of age	911
Total Indians on reserve	4,917
Children between 6 and 16 years of age	1,238

The census was taken in a careful manner by a large number of persons on the same day. The reserve is divided into seven districts, with a farmer in each district and assistants in charge of each, and these districts are further subdivided into several school districts, and in taking the census not only the farmers, but the teachers and police and all other employees are made use of. A census thus taken in one day by persons who know the Indians, if carefully done, should be quite accurate, and the results given above are believed to be so.

* * *

Twenty-one Government day and one Government boarding and two mission boarding schools have been in successful operation during the ten months of the year. The reports of the superintendent of the Rosebud

boarding school and of the day school inspector are transmitted herewith and furnish the detailed information regarding the schools.

* * *

[372] Special Allotting Agent William A. Winder and his assistants are still engaged in the work of allotting the Rosebud Sioux. The number of allotments made to June 30, 1900, was 4,064 and from that time to June 30, 1901, 444 more were made, making a total of 4,508.

[#14]

(Memorial of South Dakota Legislature petitioning Congress to ratify the 1901 agreement with the Rosebud Sioux)

[36 Cong. Rec. 148 (1902-1903)]

Rosebud Reservation:

* * *

Memorial of legislature of South Dakota favoring ratification of agreement with Indians on 1559, 1626.

[36 Cong. Rec. 1559 (1903)]

Mr. Kittredge. I present resolutions of the legislature of the State of South Dakota, favoring the enactment of legislation providing for the ratification of the present agreement with the Rosebud (Sioux) Indians for the cession of all that portion of their reservation lying in the county of Gregory, and praying that it be opened to homestead settlement. I ask that the resolutions may be printed in the Record, and referred to the Committee on Indian Affairs.

There being no objection, the resolutions were referred to the Committee on Indian Affairs, and ordered to be printed in the Record, as follows:

State of South Dakota, Department of State.

United States of America,

State of South Dakota, Secretary's Office:

I, O. C. Berg, secretary of state of the State of South Dakota, do hereby certify that the attached instrument of writing is a true and correct copy of the house joint resolution No. 7, as passed by the legislature of 1903, as the same appears of record in this office, and of the whole thereof.

In testimony whereof I have herunto set my hand and affixed the great seal of the State of South Dakota. Done at the city of Pierre this 29th day of January, 1903.

[Seal]

O.C. Berg, Secretary of State.

A joint resolution by the house and senate of the eighth legislative assembly of the State of South Dakota, memorializing the Congress of the United States to ratify the existing treaty with the Rosebud (Sioux) Indians for a cession of all that portion of their reservation lying in the county of Gregory, S. Dak., and praying that provisions be made for opening said tract to homestead settlement.

Be it resolved by the house of representatives (the senate concurring), That whereas one James McLaughlin, as United States Indian inspector, did on the 4th day of September, A.D. 1901, make and conclude an agreement with the male adult Indians of the Rosebud Reservation, in the state of South Dakota, for a cession of certain described lands lying and being in Gregor County, S. Dak.; and

Whereas said body of land, comprising approximately 416,000 acres, is reputed to be

fertile in soil and rich in all natural reserves, needing only settlement and development to transform it into one of the choicest spots of our great State; and

Whereas in its present state the coveted land brings no revenue to the Indians and they desire to cede it, as evidenced by their treaty; and

Whereas the acquisition of this Territory to the taxable area of the State would mean the addition of thousands to our population and the enlargement of Gregory County, which is now so small it can not maintain a county government without an annual deficit even with an excessive tax levy: Therefore, be it

Resolved, That we, in justice to both the Indians and our State, implore the Congress of the United States to hasten a ratification of the existing treaty and to provide ways and means for the early opening of this splendid body of land to homestead settlement, under such restrictions and conditions as they may deem wise.

[36 Cong. Rec. 626 (1903)]

By the Speaker: A joint resolution of the legislature of South Dakota, relating to a treaty with the Rosebud Indians—to the Committee on Indian Affairs.

[#14A]

[Excerpt from letter dated August 31, 1903 from Inspector James McLaughlin to the Secretary of the Interior (N.A. Group 48, Records of the office of the Secretary of the Interior, Indian Division)]

[p.2] On August 8th I submitted the agreement, herewith transmitted, [p. 3] and invited those assenting to come forward and sign it; and notwithstanding that the council was dominated by the more active opponents of the proposition, 90 signatures were at once obtained, leaving only about 35 of those present who refused to concur.

This large percentage of the assemblage assenting to the provisions of the new agreement, together with the message delivered me by the lieutenant of police from persons favoring the agreement who had returned to their homes, encouraged me sufficiently to make a tour of the several districts of the Reservation, and meet the Indians of the different settlements at the headquarters of their respective districts. I travelled by team about 400 miles over the Reservation, 100 miles through the districts west of the Agency and about 300 miles in the districts east of the Agency, visiting them in the following order: — Spring Creek, Upper Cut Meat, Cut Meat Issue Station, Black Pipe, Little White River, Butte Creek, Big White River, Bull Creek and Ponca Creek,—thus consuming sixteen days, during which time I explained every feature of the agreement at the nine different points above stated, at each of which district headquarters I received quite a number of signatures, a total of 737, which number, whilst being 48 more than half of the male adult Indians of the Reservation, is 296 less than the required three-fourths majority.

(Excerpt from Report of the Commissioner of Indian Affairs, 1904)

Report of Agent for Rosebud Agency, August 25, 1904.

For administrative purposes the reserve is divided into seven districts, with a farmer in charge of each, who makes his residence at the issue station of the district. The Ponca Creek district is in charge of the teacher of Milk's Camp day school, who resides at the school. These administrative officials have direct charge of districts to which they are assigned, under the instructions of the agent, and are charged with the duty of supervising the work of the able-bodied, the issues of rations to the old, sick, helpless, and infirm, as well as the able-bodied during the winter months, the preservation of order, etc. In short, the general welfare of the Indian in all that concerns their material interests is intrusted to these farmers.

[#14B]

[Excerpts from Report of the Commissioner of Indian Affairs, 1903.]

[318] Twenty-one Government day and one Government boarding and two Mission boarding schools have been in successful operation during the year. The reports of the superintendent of the Rosebud School and of the day school inspector are herewith transmitted, and referred to as furnishing the detailed information regarding the schools.

The work of allotting land to these Indians ceased in March last with the death of Special Allotting Agent William A. Winder. In all 4,669 allotments have been made on this reserve.

* * *

[b.522] South Dakota—continued.

Rosebud Agency.

Brulé, Loafer, Lower Brulé, Northern

Two Kettle and Wazhazhe Sioux:

Agency district	1,265
Big White River district	374
Black Pipe Creek district	489
Butte Creek district	899
Cut Meat Creek district	973
Little White River district	561
Ponca Creek district	411

[4972]

[#15]

(Enacted H.R. 10418)

[Act of April 23, 1904, ch. 1484, 33 Stat. 254]

Chap. 1484. — An Act To ratify and amend an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation and provision to carry the same into effect.

Whereas James McLaughlin, United States Indian inspector, did on the fourteenth day of September, anno Domini nineteen hundred and one, make and conclude an agreement with the male adult Indians of the Rosebud Reservation, in the State of South Dakota, which said agreement is in words and figures as follows:

This agreement made and entered into on the fourteenth day of September, nineteen hundred and one, by and between James McLaughlin, United States Indian inspector, on the part of the United States, and the Sioux tribe of Indians belonging on the Rosebud Reservation, in the State of South Dakota, witnesseth:

Article I. The said Indians belonging on the Rosebud Reservation, South Dakota, for the consideration hereinafter named, do hereby cede, surrender, grant, and convey to the United States all their claim, right, title, and interest in and to all that part of the Rosebud Indian Reservation now remaining unallotted, situated within the boundaries of Gregory County, South Dakota, described more particularly as follows: Commencing in the middle of the main channel of the Missouri River at the intersection of the south line of Brule County; thence down said middle of the main channel of said river to the intersection of the ninety-ninth degree of west longitude from Greenwich; thence

due south to the forty-third parallel of latitude; thence west along said parallel of latitude to its intersection with the tenth guide meridian; thence north along said guide meridian to its intersection with the township line between townships one hundred and one hundred and one north; thence east along said township line to the point of beginning, the unallotted land hereby ceded approximating four hundred and sixteen thousand (416,000) acres, lying and being within the boundaries of Gregory County, South Dakota, as said county is at present defined and organized.

Article II. In consideration of the land ceded, relinquished, and conveyed by Article I of this agreement the United States stipulates and agrees to expend for and pay to said Indians, in the manner hereinafter provided, the sum of one million and forty thousand (1,040,000) dollars.

Article III. It is agreed that of the amount to be expended for and paid to said Indians, as stipulated in Article II of this agreement, the sum of two hundred and fifty thousand (250,000) dollars shall be expended in the purchase of stock cattle, of native range or graded Texas two-year-old heifers and graded Durham or Hereford two-year-old bulls, for issue to said Indians, to be distributed as equally as possible among men, women, and children as soon as practicable after the ratification of this agreement, and that the sum of seven hundred and ninety thousand (790,000) dollars shall be paid to said Indians per capita in cash in five annual installments of one hundred and fifty-eight thousand (158,000) dollars each, the first of which cash payments shall be made within four months after the ratification of this agreement.

Article IV. It is further agreed that all persons of the Rosebud Indian Reservation, South Dakota, who have

been allotted lands and who are now recognized as members of the tribe belonging on said reservation, including mixed-bloods, whether their white blood comes from the paternal or maternal side, and the children born to them, shall enjoy the undisturbed and peaceable possession of their allotted lands, and shall be entitled to all the rights and privileges of the tribe enjoyed by full-blood Indians upon the reservation; and that white men heretofore lawfully intermarried into the tribe and now living with their families upon said reservation shall have the right of residence thereon, not inconsistent with existing statutes.

Article V. It is understood that nothing in this agreement shall be construed to deprive the said Indians of the Rosebud Reservation, South Dakota, of any benefits to which they are entitled under existing treaties or agreements, not inconsistent with the provisions of this agreement.

Article VI. This agreement shall take effect and be in force when signed by U.S. Indian Inspector James McLaughlin and by three-fourths of the male adult Indians parties hereto, and when accepted and ratified by the Congress of the United States.

In witness whereof the said James McLaughlin, U.S. Indian inspector, on the part of the United States, and the male adult indians belonging on the Rosebud Reservation, South Dakota, have hereunto set their hands and seals at Rosebud Indian Agency, South Dakota, this fourteenth day of September, A.D. nineteen hundred and one.

James McLaughlin,
U.S. Indian Inspector.

No.	Name.	Mark.	Age.
1	He Dog	x	65
2	High Hawk	x	50
3	Black Bird	x	62
(and 1,028 more Indian signatures.)			

We, the undersigned, hereby certify that the foregoing agreement was fully explained by us in open council to the Indians of the Rosebud Agency, South Dakota; that it was fully understood by them before signing, and that the foregoing signatures, though names are similar in some cases, represent different individuals in each instance, as indicated by their respective ages.

William Bordeaux, *Official Interpreter*
Wm. F. Schmidt, *Special Interpreter*

Rosebud Agency, S. Dak., October 4, 1901.

We, the undersigned, do hereby certify that we witnessed the signatures of James McLaughlin, United States Indian inspector, and the 1,031 Indians of the Rosebud Agency, S. Dak., to the foregoing agreement.

Frank Mullen, Agency Clerk.

C. H. Bennett, Farmer, Cut Meat District.

John Sullivan, Farmer, Black Pipe District.

Frank Robinson, Farmer, Little White River District.

Frank Sypal, Farmer, Butte Creek District.

Isaac Bettelyoun, Farmer, Big White River District.

James A. McCorkle, Farmer, Ponca District.

Louis Bordeaux, Ex-Farmer, Agency District.

Rosebud Agency, S. Dak., October 4, 1901.

I certify that the total number of male adult Indians over 18 years of age belonging on the Rosebud Reservation, S. Dak., is 1,359 of whom 1,031 have signed the foregoing agreement, being 12 more than three-fourths of the male adult Indians of the Rosebud Reservation. S. Dak.

Chas. E. McChesney.

United States Indian Agent.

Rosebud Agency, S. Dak., October 4, 1901.

Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the said agreement be, and the same hereby is, accepted, ratified, and confirmed as herein amended and modified, as follows:

"Article I. The said Indians belonging on the Rosebud Reservation, South Dakota, for the consideration hereinafter named, do hereby cede, surrender, grant, and convey to the United States all their claim, right, title, and interest in and to all that part of the Rosebud Indian Reservation now remaining unallotted, situated within the boundaries of Gregory County, South Dakota, described more particularly as follows: Commencing in the middle of the main channel of the Missouri River at the intersection of the south line of Brule County; thence down said middle of the main channel of said river to the intersection of the ninety-ninth degree of west longitude from Greenwich; thence due south to the forty-third parallel of latitude; thence west along said parallel of latitude to its intersection with the tenth guide meridian; thence north along said guide meridian to its intersection with the township line between townships one hundred and one hundred and

one north; thence east along said township line to the point of beginning, the unallotted land hereby ceded approximating four hundred and sixteen thousand acres, lying and being within the boundaries of Gregory County, South Dakota, as said county is at present defined and organized.

"Art. II. In consideration of the land ceded, relinquished, and conveyed by article one of this agreement, the United States stipulates and agrees to dispose of the same to settlers under the provisions of the homestead and town-site laws, except sections sixteen and thirty-six, or an equivalent of two sections in each township, and to pay to said Indians the proceeds derived from the sale of said lands; and also the United States stipulates and agrees to pay for sections sixteen and thirty-six, or an equivalent of two sections in each township, two dollars and fifty cents per acre.

"Art. III. It is agreed that of the amount to be derived from the sale of said lands to be paid to said Indians, as stipulated in article two of this agreement, the sum of two hundred and fifty thousand dollars shall be expended in the purchase of stock cattle, of native range or graded Texas two-year-old heifers and graded Durham or Hereford two-year-old bulls, for issue to said Indians, to be distributed as equally as possible among men, women, and children, but not more than one half of the money received in any one year shall be expended as aforesaid, and the other half shall be paid to said Indians per capita in cash, and an accounting, settlement, and payment shall be made in the month of October in each year until the lands are fully paid for and the funds distributed in accordance with this agreement: *Provided, however,* That not more than five hundred thousand dollars shall be expended or paid within two years after the ratification of this agree-

ment, and not to exceed one hundred and fifty thousand dollars in each of the following years until the expiration of five years.

"Art. IV. It is further agreed that all persons of the Rosebud Indian Reservation, South Dakota, who have been allotted lands and who are now recognized as members of the tribe belonging on said reservation, including mixed-bloods, whether their white blood comes from the paternal or maternal side, and the children born to them, shall enjoy the undisturbed and peaceable possession of their allotted lands, and shall be entitled to all the rights and privileges of the tribe enjoyed by full-blood Indians upon the reservation; and that white men heretofore lawfully intermarried into the tribe and now living with their families upon said reservation shall have the right of residence thereon, not inconsistent with existing statutes.

"Art. V. It is further agreed that all persons of the Rosebud Indian Reservation, South Dakota, of any benefits to which they are entitled under existing treaties or agreements, not inconsistent with the provisions of this agreement."

Sec. 2. That the lands ceded to the United States under said agreement, excepting such tracts as may be reserved by the President, not exceeding three hundred and ninety-eight and sixty-seven one-hundredths acres in all, for subissue station, Indian day school, one Catholic mission, and two Congregational missions, shall be disposed of under the general provisions of the homestead and town-site laws of the United States, and shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the manner in which these lands may be settled upon, occupied, and entered by persons entitled to make entry thereof; and no person shall be permitted to

settle upon, occupy, or enter any of said lands, except as prescribed in such proclamation, until after the expiration of sixty days from the time when the same are opened to settlement and entry: *Provided*, That the rights of honorably discharged Union soldiers and sailors of the late civil and Spanish war or Philippine insurrection, as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes, as amended by the Act of March first, nineteen hundred and one, shall not be abridged: *And provided further*, That the price of said lands entered as homesteads under the provisions of this Act shall be as follows: Upon all land entered or filed upon within three months after the same shall be opened for settlement and entry, four dollars per acre, to be paid as follows: One dollar per acre when entry is made; seventy-five cents per acre within two years after entry; seventy-five cents per acre within three years after entry; seventy-five cents per acre within four years after entry, and seventy-five cents per acre within six months after the expiration of five years after entry. And upon all land entered or filed upon after the expiration of three months and within six months after the same shall be opened for settlement and entry, three dollars per acre, to be paid as follows: One dollar per acre when entry is made; fifty cents per acre within two years after entry; fifty cents per acre within three years after entry; fifty cents per acre within four years after entry, and fifty cents per acre within six months after the expiration of five years after entry. After the expiration of six months after the same shall be opened for settlement and entry the price shall be two dollars and fifty cents per acre, to be paid as follows: Seventy-five cents when entry is made; fifty cents per acre within two years after entry;

fifty cents per acre within three years after entry; fifty cents per acre within four years after entry, and twenty-five cents per acre within six months after the expiration of five years of said entry: *Provided*, That in case any entryman fails to make such payment or any of them within the time stated all rights in and to the land covered by his or her entry shall at once cease, and any payments theretofore made shall be forfeited, and the entry shall be forfeited and held for cancellation and the same shall be cancelled: *And provided*, That nothing in this Act shall prevent homestead settlers from commuting their entries under section twenty-three hundred and one, Revised Statutes, by paying for the land entered the price fixed herein, receiving credit for payments previously made. In addition to the price to be paid for the land, the entryman shall pay the same fees and commissions at the time of commutation or final entry, as now provided by law, where the price of the land is one dollar and twenty-five cents per acre: *And provided further*, That all lands herein ceded and opened to settlement under this Act, remaining undisposed of at the expiration of four years from the taking effect of this Act, shall be sold and disposed of for cash, under rules and regulations to be prescribed by the Secretary of the Interior, not more than six hundred and forty acres to any one purchaser.

Sec. 3. That the proceeds received from the sale of said lands in conformity with this Act shall be paid into the Treasury of the United States, and paid to the Rosebud Indians or expended on their account only as provided in article three of said agreement as herein amended.

Sec. 4. That sections sixteen and thirty-six of the lands hereby acquired in each township shall not be

subject to entry, but shall be reserved for the use of the common schools and paid for by the United States at two dollars and fifty cents per acre, and the same are hereby granted to the State of South Dakota for such purpose; and in case any of said sections, or parts thereof, of the land in said county of Gregory are lost to said State of South Dakota by reason of allotments thereof to any Indian or Indians, now holding the same, or otherwise, the governor of said State, with the approval of the Secretary of the Interior, is hereby authorized, in the tract herein ceded, to locate other lands not occupied not exceeding two sections in any one township, which shall be paid for by the United States as herein provided in quantity equal to the loss, and such selections shall be made prior to the opening of such lands to settlement.

Sec. 5. That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of seventy-five thousand dollars, or so much thereof as may be necessary, to pay for the lands granted to the State of South Dakota, as provided in section four of this Act.

Sec. 6. That nothing in this Act contained shall in any manner bind the United States to purchase any portion of the land herein described, except sections sixteen and thirty-six or the equivalent in each township, or to dispose of said land except as provided herein; or to guarantee to find purchasers for said lands, or any portion thereof, it being the intention of this Act that the United States shall act as trustee for said Indians to dispose of said lands and to expend and pay over the proceeds received from the sale thereof only as received, as herein provided.

Approved, April 23, 1904.

[#15A]

(Legislative history of H.R. 10418)

Rosebud Reservation: bills to ratify agreement with Sioux Indians on (see bills S. 3779; H.R. 10418)

[38 Cong. Rec. 275]

H.R. 10418—

To ratify and amend an agreement with the Sioux tribe of Indians of the Rosebud Reservation in South Dakota, and making appropriation and provision to carry the same into effect.

Mr. Burke; Committee on Indian Affairs
 902.—Reported back with amendment (H.R. Report 443) 1010.—Made special order
 1292.—Debated 1421.—Passed House 1469.—
 Referred to Senate Committee on Indian Affairs
 1467.—Reported back (S. Report 651) 1601.—
 Debated, amended, and passed Senate 4984,
 4985.—House concurs in Senate amendments
 5155.—Examined and signed 5214, 5218,
 5287.—Approved by President 5447.

[38 Cong. Rec. 902-903 (1904)]

PUBLIC BILLS, RESOLUTIONS, AND MEMORIALS.

* * *

By Mr. BURKE: A bill (H.R. 10418) to ratify and amend an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation and provision to carry the same into effect—to the Committee on Indian Affairs.

[38 Cong. Rec. 1010]

REPORTS OF COMMITTEES ON PUBLIC BILLS AND
RESOLUTIONS.

* * *

Mr. BURKE, from the Committee on Indian Affairs, to which was referred the bill of the House (H.R. 10418) to ratify and amend an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation and provision to carry the same into effect, reported the same with amendment, accompanied by a report (No. 443); which said bill and report were referred to the Committee of the Whole House on the state of the Union.

[38 Cong. Rec. 1292-1293 (1904)]

SIOUX INDIANS IN SOUTH DAKOTA.

Mr. BURKE. Mr. Speaker, I ask unanimous consent that upon the disposition of the bill now before the House, namely, the urgent deficiency bill, the bill (H.R. 10418) to ratify and amend an agreement with the Sioux Indians of the Rosebud Reservation, in South

Dakota, be made the special order and that it continue to be the special order until disposed of, this order not to interfere with revenue or appropriation bills, or bills upon the Private Calendar, or with any business that is privileged under the rules, and that the bill be considered in the House.

Mr. WILLIAMS of Mississippi. This, I understand, is a bill to open up the reservation in South Dakota.

Mr. BURKE. It is.

The SPEAKER. The gentleman from South Dakota asks unanimous consent that the bill H.R. 10418 be considered in the House immediately after the completion of the urgent deficiency bill, and to remain in a continuing order, not to interfere with revenue or appropriation bills, the Private Calendar, private business, or other privileged matters. Is there objection? [After a pause.] The Chair hears none.

[38 Cong. Rec. 1421-1429 (1904)]

SIOUX TRIBE OF INDIANS, SOUTH DAKOTA.

Mr. BURKE. Mr. Speaker, I demand the regular order.

The SPEAKER. The gentleman from South Dakota demands the regular order, which is the consideration of the bill (H.R. 10418) to ratify and amend an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation and provision to carry the same into effect.

The Clerk read the bill, as follows:

A bill to ratify and amend an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation and provision to carry the same into effect.

Whereas James McLaughlin, United States Indian inspector, did on the 14th day of September, A.D. 1901, make and conclude an agreement with the male adult Indians of the Rosebud Reservation, in the State of South Dakota, which said agreement is in words and figures as follows:

This agreement made and entered into on the 14th day of September, 1901, by and between James McLaughlin, United States Indian inspector, on the part of the United States, and the Sioux tribe of Indians belonging on the Rosebud Reservation, in the State of South Dakota, witnesseth:

ARTICLE I. The said Indians belonging to the Rosebud Reservation, S. Dak., for the consideration hereinafter named, do hereby cede, surrender, grant, and convey to the United States all their claim, right, title, and interest in and to all that part of the Rosebud Indian Reservation now remaining unallotted, situated within the boundaries of Gregory County, S. Dak., described more particularly as follows: Commencing in the middle of the main channel of the Missouri River at the intersection of the south line of Brule County; thence down said middle of the main channel of said river to the intersection of the ninety-ninth degree of west longitude from Greenwich; thence due south to the forth-third parallel of latitude; thence west along said parallel of latitude to its intersection with the tenth guide meridian; thence north along said guide meridian to its intersection with the township line between townships 100 and 101 north; thence east along

said township to the point of beginning, the unallotted land hereby ceded approximating 416,000 acres, lying and being within the boundaries of Gregory County, S. Dak., as said county is at present defined and organized.

ART. II. In consideration of the land ceded, relinquished, and conveyed by Article I of this agreement the United States stipulates and agrees to expend for and pay to said Indians, in the manner hereinafter provided, the sum of \$1,040,000.

ART. III. It is agreed that of the amount to be expended for and paid to said Indians, as stipulated in Article II of this agreement, the sum of \$250,000 shall be expended in the purchase of stock cattle of native range or graded Texas 2-year-old heifers and graded Durham or Hereford 2-year-old bulls for issue to said Indians, to be distributed as equally as possible among men, women, and children as soon as practicable after the ratification of this agreement, and that the sum of \$790,000 shall be paid to said Indians per capita in cash in five annual installments of \$158,000 each, the first of which cash payments shall be made within four months after the ratification of this agreement.

ART. IV. It is further agreed that all persons of the Rosebud Indian Reservation, S. Dak., who have been allotted lands and who are now recognized as members of the tribe belonging on said reservation, including mixed-bloods, whether their white blood comes from the paternal or maternal side, and the children born to them, shall enjoy the undisturbed and peaceable possession of their allotted lands, and shall be entitled to all the rights and privileges of the tribe enjoyed by full-blood Indians upon the reservation; and that white men

heretofore lawfully intermarried into the tribe and now living with their families upon said reservation shall have the right of residence thereon, not inconsistent with existing statutes.

ART. V. It is understood that nothing in this agreement shall be construed to deprive the said Indians of the Rosebud Reservation, S. Dak., of any benefits to which they are entitled under existing treaties or agreements, not inconsistent with the provisions of this agreement.

ART. VI. This agreement shall take effect and be in force when signed by United States Indian Inspector James McLaughlin and by three-fourths of the male adult Indians parties hereto and when accepted and ratified by the Congress of the United States.

In witness whereof the said James McLaughlin, United States Indian inspector, on the part of the United States, and the male adult Indians belonging on the Rosebud Reservation, S. Dak., have hereunto set their hands and seals at Rosebud Indian Agency, S. Dak., this 14th day of September, A.D. 1901.

James McLaughlin,
United States Indian Inspector.

No.	Name.	Mark.	Age.
1	He Dog	x	65
2	High Hawk	x	50
3	Black Bird	x	62

(and 1,028 more Indian signatures.)

We, the undersigned, hereby certify that the foregoing agreement was fully explained by us in open council to the Indians of the Rosebud Agency, S. Dak.; that it was fully understood by

them before signing, and that the foregoing signatures, though names are similar in some cases, represent different individuals in each instance, as indicated by their respective ages.

William Bordeaux, *Official Interpreter.*

Wm. F. Schmidt, *Special Interpreter.*

Rosebud Agency, S. Dak., October 4, 1901.

We, the undersigned, do hereby certify that we witnessed the signatures of James McLaughlin, United States Indian inspector, and the 1,031 Indians of the Rosebud Agency, S. Dak., to the foregoing agreement.

Frank Mullen,

Agency Clerk.

C. H. Bennett,

Farmer, Cut Meat District.

John Sullivan,

Farmer, Black Pipe District.

Frank Robinson,

Farmer, Little White River District.

Frank Sypal,

Farmer, Butte Creek District.

Isaac Bettelyoun,

Farmer, Big White River District.

James A. McCorkle,

Farmer, Ponca District.

Louis Bordeaux,

Ex-Farmer, Agency District.

Rosebud Agency, S. Dak., October 4, 1901.

I certify that the total number of male adult Indians over 18 years of age belonging on the Rosebud Reservation, S. Dak., is 1,359, of whom 1,031 have signed the foregoing agreement, being 12 more than three-fourths of the male adult Indians of the Rosebud Reservation, S. Dak.

Chas. E. McChesney,

United States Indian Agent.

Rosebud Agency, S. Dak., *October 4, 1901.*

Therefore,

Be it enacted, etc., That the said agreement be, and the same hereby is, accepted, ratified, and confirmed as herein amended and modified, as follows:

"ARTICLE I. The said Indians belonging on the Rosebud Reservation, S. Dak., for the consideration hereinafter named, do hereby cede, surrender, grant, and convey to the United States all their claim, right, title, and interest in and to all that part of the Rosebud Indian Reservation now remaining unallotted, situated within the boundaries of Gregory County, S. Dak., described more particularly as follows: Commencing in the middle of the main channel of the Missouri River at the intersection of the south line of Brule County; thence down said middle of the main channel of said river to the intersection of the ninety-ninth degree of west longitude from Greenwich; thence due south to the forty-third parallel of latitude; thence west along said parallel of latitude to its intersection with the tenth guide meridian; thence north along said guide meridian to its intersection with the township line between townships 100 and 101 north; thence east along said township line to the point of beginning, the unallotted land hereby ceded approximating 416,000 acres, lying and being within the boundaries of Gregory County, S. Dak., as said county is at present defined and organized.

"ART. II. In considration of the land ceded, relinquished, and conveyed by article 1 of this agreement, the United States stipulates and agrees to dispose of the same to settlers under the provision of the homestead and townsite laws, except sections 16 and 36, or an equivalent of two

sections in each township, and to pay to said Indians the proceeds derived from the sale of said lands; and also the United States stipulates and agrees to pay for sections 16 and 36, or an equivalent of two sections in each township, \$2.50 per acre.

"ART. III. It is agreed that of the amount to be derived from the sale of said lands to be paid to said Indians, as stipulated in article 2 of this agreement, the sum of \$250,000 shall be expended in the purchase of stock cattle, of native range or graded Texas 2-year-old heifers and graded Durham or Hereford 2-year-old bulls, for issue to said Indians, to be distributed as equally as possible among men, women, and children, but not more than one-half of the money received in any one year shall be expended as aforesaid, and the other half shall be paid to said Indians per capita in cash, and an accounting, settlement, and payment shall be made in the month of October in each year until the lands are fully paid for and the funds distributed in accordance with this agreement: *Provided, however,* That not more than \$500,000 shall be expended or paid within two years after the ratification of this agreement, and not to exceed \$150,000 in each of the following years until the expiration of five years.

"ART. IV. It is further agreed that all persons of the Rosebud Indian Reservation, S. Dak., who have been allotted lands and who are now recognized as members of the tribe belonging on said reservation, including mixed-bloods, whether their white blood comes from the paternal or maternal side, and the children born to them, shall enjoy the undisturbed and peaceable possession of their allotted lands, and shall be entitled to all the rights and privileges of the tribe enjoyed by full-blooded Indians upon the reservation; and that white men

heretofore lawfully intermarried into the tribe and now living with their families upon said reservation shall have the right of residence thereon, not inconsistent with existing statutes.

"ART. V. It is understood that nothing in this agreement shall be construed to deprive the said Indians of the Rosebud Reservation, S. Dak., of any benefits to which they are entitled under existing treaties or agreements, not inconsistent with the provisions of this agreement."

SEC. 2. That the lands ceded to the United States under said agreement, excepting such tracts as may be reserved by the President, not exceeding 398.67 acres in all, for subissue station, Indian day school, one Catholic mission, and two Congregational missions, shall be disposed of under the general provisions of the homestead and town-site laws of the United States, and shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the manner in which those lands may be settled upon, occupied, and entered by persons entitled to make entry thereof; and no person shall be permitted to settle upon, occupy, or enter any of said lands, except as prescribed in such proclamation, until after the expiration of sixty days from the time when the same are opened to settlement and entry: *Provided*, That the rights of honorably discharged Union soldiers and sailors of the late civil and the Spanish wars, as defined and described in sections 2304 and 2305 of the Revised Statutes, as amended by the act of March 1, 1901, shall not be abridged: *And provided further*, That the price of said lands shall be as follows: Upon all land entered or filed upon within six months after the same shall be opened for settlement and entry, \$3 per acre, to be paid as follows: One dollar per acre when entry is

made; 50 cents per acre within two years after entry; 50 cents per acre within three years after entry; 50 cents per acre within four years after entry, and 50 cents per acre within six months after the expiration of five years after entry. After the expiration of six months after the same shall be opened for settlement and entry the price shall be \$2.50 per acre, to be paid as follows: Seventy-five cents when entry is made; 50 cents per acre within two years after entry; 50 cents per acre within three years after entry; 50 cents per acre within four years after entry, and 25 cents per acre within six months after the expiration of five years after entry: *Provided*, That in case any entryman fails to make such payment, or any of them, within the time stated all rights in and to the land covered by his or her entry shall at once cease, and any payments theretofore made shall be forfeited, and the entry shall be forfeited and held for cancellation: *And provided*, That nothing in this act shall prevent homestead settlers from commuting their entries under section 2301, Revised Statutes, by paying for the land entered the price fixed herein, receiving credit for payments previously made. In addition to the price to be paid for the land, the entryman shall pay the same fees and commissions at the time of commutation or final entry, as now provided by law, where the price of the land is \$1.25 per acre: *And provided further*, That all lands herein ceded and opened to settlement under this act, remaining undisposed of at the expiration of four years from the taking effect of this act, shall be sold and disposed of for cash, under rules and regulations to be prescribed by the Secretary of the Interior.

SEC. 3. That the proceeds received from the sale of said lands in conformity with this act shall be paid into the Treasury of the United States,

and paid to the Rosebud Indians or expended on their account only as provided in article 3 of said agreement as herein amended.

SEC. 4. That sections 16 and 36 of the lands hereby acquired in each township shall not be subject to entry, but shall be reserved for the use of the common schools and paid for by the United States at \$2.50 per acre, and the same are hereby granted to the State of South Dakota for such purpose; and in case any of said sections, or parts thereof, of the land in said county of Gregory are lost to said State of South Dakota by reason of allotments thereof to any Indian or Indians, now holding the same, or otherwise, the governor of said State, with the approval of the Secretary of the Interior, is hereby authorized, in the tract herein ceded, to locate other lands not occupied, which shall be paid for by the United States as herein provided in quantity equal to the loss, and such selections shall be made prior to the opening of such lands to settlement.

SEC. 5. That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$90,000, or so much thereof as may be necessary, to pay for the lands granted to the State of South Dakota, as provided in section 4 of this act.

SEC. 6. That nothing in this act contained shall in any manner bind the United States to purchase any portion of the land herein described, except sections 16 and 36 or the equivalent in each township, or to dispose of said land except as provided herein, or to guarantee to find purchasers for said lands or any portion thereof, it being the intention of this act that the United States shall act as trustee for said Indians to dispose of said lands and to expend and pay over the proceeds received from the sale thereof only as received, as herein provided.

During the reading of the bill Mr. FINLEY rose.

The SPEAKER. For what purpose does the gentleman rise?

Mr. FINLEY. I believe that we are reading the bill. Is the bill open for amendment?

The SPEAKER. Not while it is being read. It will be open for amendment when the reading is concluded.

The Clerk concluded the reading of the bill.

Mr. BURKE. Mr. Speaker, this bill provides for the opening to settlement of 416,000 acres of land, now a portion of the Rosebud Reservation, in South Dakota, being that portion of the reservation in Gregory County. In 1901 a treaty was entered into with the Rosebud Indians on the part of the United States, by which the Indians agreed to sell to the Government this land for \$2.50 per acre. That treaty was transmitted to Congress, and because of the fact that it provided that the Government should pay for the lands outright and then take the chance of the Treasury being reimbursed by disposing of the lands to settlers, it never got further than through the Committee on Indian Affairs, which unanimously reported it favorably. It was never given consideration in the House.

Toward the concluding days of the last session of Congress a new bill was prepared, substantially as this bill now provides, and that bill provided that the lands should be ceded by the Indians to the Government, disposed of to settlers under the provisions of the homestead law, the price to be fixed at \$2.50 an acre, as was provided in the original treaty. That bill did not receive consideration in the last Congress because of lack of time, but during the summer that bill was submitted to this tribe of Indians for their acceptance, and forty-eight more than a majority consented to accept the terms of that bill. This bill is substantially

the same as the bill which I have just referred to, except that the committee, in view of a suggestion made by the Commissioner of Indian Affairs, in which he said he had no objection to the passage of this bill provided the Indians were insured of as much money as they would have received under the treaty, instead of fixing the price at \$2.75, which was provided in the bill submitted to the Indians during the summer, fixed the price at \$3 per acre for all lands taken within the first six months and \$2.50 for all lands taken thereafter.

It was thought by the committee that this would certainly insure to the Indians as much money as they would have received under the original treaty, and, in my judgment, it insures their receiving considerably more. There is no opposition to the passage of this measure, so far as I know. The Indian Bureau and the Secretary of the Interior have both approved it, providing we fix a price, as we have done, that will insure the Indians as much money as they would have received under the original treaty. The Committee on Indian Affairs has considered it fully and at length and has spent several meetings of the full committee considering it. The report of the committee is unanimous. I do not care to occupy the attention of the House in making any extended remarks on the bill, and unless some gentleman desires to ask some questions I will reserve the balance of my time.

Mr. FINLEY. Mr. Speaker, I observe that in section 4, reserving school lands, it is provided that the Government pay for those lands. Is that the usual appropriation that is put in all bills of this character?

Mr. BURKE. I am glad the gentleman has asked me that question. I would state that under the enabling act under which the State of South Dakota was admitted to the Union it was provided that sections 16 and 36 in

said State should be reserved for the use of the common schools of that State, and it further provided that as to the lands within an Indian reservation the provisions of that grant would not become operative until the reservation was extinguished and the land restored to the public domain. That enabling act was passed by Congress on the 22d day of February, 1889. In March of that same year Congress ratified a treaty with the Sioux Indians in South Dakota for the cession of something like ten or eleven millions of acres of land, and made an express appropriation, in accordance with the provisions of the enabling act, to pay outright out of the Treasury the money for sections 16 and 36 of that land at the price stipulated for in the treaty.

Mr. FINLEY. Then, as I understand the gentleman, he bases the wisdom or equity for this provision upon the enabling act admitting South Dakota into the Union?

Mr. BURKE. Yes.

Mr. FINLEY. And not otherwise?

Mr. BURKE. No.

Mr. FINLEY. What is the number of acres of land that have been granted by the National Government to the State of South Dakota for school purposes heretofore?

Mr. BURKE. Sections 16 and 36.

Mr. FINLEY. About how many acres does it amount to?

Mr. BURKE. I could not state.

Mr. FINLEY. The State is quite rich in school lands, is it not?

Mr. BURKE. Yes.

Mr. FINLEY. About what amount of money will be required from the Treasury of the United States to pay for the school lands provided for here in section 4?

Mr. BURKE. Not to exceed about \$70,000—I think \$72,000 or \$73,000. I am going to ask to amend the bill by striking out “\$90,000,” and inserting “\$75,000.” The actual amount, I think, will be about \$72,000, as nearly as I can calculate.

Mr. Speaker, I reserve the balance of my time and yield ten minutes to the gentleman from New York [Mr. BAKER].

Mr. BAKER. Oh, make it fifteen.

Mr. BURKE. I hope the gentleman will be satisfied with ten minutes. We want to get through the bill as quickly as possible.

Mr. BAKER. Mr. Speaker, I recognize that it will make little difference when the vote on this bill is taken whether I speak for five or fifteen minutes. Yet, Mr. Speaker, because this bill involves what seems to me a violation of the principle which should obtain with reference to the ownership of land, because it violates the principle which, in my judgment, should obtain in opening public land for settlement, I desire to enter my protest against the bill on those grounds.

I regret very much, Mr. Speaker, that I did not know until a few moments ago that this bill was to be discussed to-day. I should very much have liked a short time, if but an hour, to send for some data to bring to the attention of the House, so as to amplify the few remarks I shall now have to make spontaneously.

Mr. Speaker, what is it that this bill proposes to do? From the standpoint from which I shall discuss the bill we can eliminate the Indians from the discussion. I am not going to raise the question here now as to what the Indians should or should not receive. That is not the point: the point is what is to become of that land when it comes into the possession of the United States and the ownership becomes vested in the people as a whole.

The bill, as its author has just stated, simply carries out a policy which has obtained in the past. Is that not so?

Mr. BURKE. Yes, sir.

Mr. BAKER. Now, Mr. Speaker, that policy to my mind is a fatally defective policy—a policy which in a large measure is responsible for the economic conditions that exist in the United States to-day. I know that my friends on the other side will say that the economic conditions in this country were never more prosperous than they are now. Let us concede for the sake of argument that is so; that they are more prosperous than they ever were; yet that does not alter my judgment that they would have been infinitely more prosperous than they are, infinitely more prosperous than they have ever been, but for the fact that the United States have followed this fatally defective policy and have permitted the alienation of its public lands. They have permitted individuals to purchase the land, and no matter how low the price at which they bought the title the increased value which comes as the result of generations of development, generations of energy applied by the people as a result of the influx of an enormous population—aside from the natural growth—whatever the cause of the increase of value, goes into the private pocket of the individual who was fortunate enough, you say shrewd enough, quick-witted enough, or anything else you may choose to call it, to get there a little ahead of somebody else and (by original entry in many cases) obtained it for nothing or for a mere song, a price that may have been the real value at the time of the purchase, but which represents a ridiculously small proportion of the value which has subsequently attached to that land as a result of population coming there.

Now in what particular does this policy violate what should in my judgment be the policy of the United States? It violates it in this way: It says to the individual who is shrewd enough to go there and arrives a day, a month, or a year ahead of somebody else—I care not what the period of time may be—he shall have the exclusive “ownership” of that land; he shall enjoy all the value which subsequently attaches, no matter what causes that increase of value.

In other words, you are by this and similar bills perpetuating—you are offering a premium to engage in land speculation in the United States, and land speculation is the curse of this country, as it has been the curse of every civilized country in the world.

The evil results which have followed the existing systems of entry and purchase of public lands are clearly illustrated in an article by J. L. McCreery, of this city, entitled “Our system of distributing the public lands.”

In illustrating some of the fraudulent methods employed, which no doubt in the main are due to the fact that the present system offers great premiums in the shape of whatever increment of value may subsequently attach to land by reason of increase of population, etc., he says:

Let us suppose (to invent a name) that the New York and Nebraska Land and Cattle Company start in business in the far West. It has in its employ 100 “cowboys.” The fertile valley of a stream is selected for its operations. At the instance of the manager of the company each of the cowboys files a preemption declaratory statement for a quarter-section (160 acres) of land. The land is selected in such a form as to cover as much space as possible up and down the stream. One

man’s four 40-acre in a “string” can often be made to cover a mile of the water course; sometimes not more than three-fourths of a mile. A hundred entrymen can thus take in 75 miles of the stream—the richest part of the valley.

The preemption law requires that a person purchasing land thereunder must prove that he has inhabited and improved such land. It does not say how long he must have done so. The General Land Office has supplied this omission and carried into effect what it conceives to be the spirit and purpose of the law by establishing a rule that such residence and improvement must have continued for at least six months, in order to afford a presumption that the settler is acting in good faith. So a few days after the expiration of six months from the date of the entry the cowboys, in “squad,” appear at the local land office and “prove up.” It is not necessary to have created a dwelling house upon and improved the land if the entryman and his two witnesses have sufficiently elastic consciences. A has for witnesses B and C; B has for witnesses A and C; C has for witnesses A and B. The land is paid for in cash, which the company furnishes. The cowboys step over to the nearest lawyer’s office, or more likely the company has its own lawyer, and deed every acre of land to the company.

Having exhausted their right under the preemption law, they forthwith proceed to enter as much more land under the homestead law. At the end of six months they pay (with money furnished by the company) for the land under the commutation provision of the homestead law, and at once transfer it to the company.

But the end is not yet. True, the preemption act and the homestead act each provides that no person shall have the benefit thereof more than

once. But at this stage of the proceedings the cowboy that last year made preemption and homestead entry of certain land under the name of John Brown now makes entry of another quarter under the name of Nicholas Yost; Frank Smith becomes Theophilus Baxter; Henry Jones becomes Philip Lingenfelter; and seven months later the syndicate obtains possession of 30,000 acres more of the best land in the State.

And by and by the immigration of honest settlers begins. They push into this region only to find that all the land worth having up and down that water course for a hundred miles has passed into the hands of this land syndicate. There is, at a moderate estimate, a space of 10 miles on each side of this stream and whatever tributaries run into it—20 miles in width by a hundred miles in length, covering an area of 2,000 square miles—in which no bona fide settler can find a foot of water front.

Why do men engage in these gigantic land frauds? It is conceivable that they would do this, that such practices would be engaged in, if the leasing system obtained, if they knew that no matter what the increase in the value of the land its annual rental would increase in like proportion? Certainly not! They do this, they are willing to blacken their own souls because of the great prizes offered them, for the possibility of a large increase in the value of the land, which at some time in the future they will be able to squeeze out of the genuine settler, the man who is really looking for a quarter section of land upon which to build a home and rear a family. Periodical appraisements at brief intervals would destroy this form of land speculation and all the fraud which attaches to it.

The methods which Mr. McCreery cites are no doubt largely responsible for the existence of enormous land holdings by companies and individuals. Every schoolboy knows the enormous increasing power of accumulated capital. As these large estates increase in size and number, the greater will be their power to absorb the smaller farms adjoining them. Our farms of 500 acres and over would now cover an area more than five times the size of the great State of Indiana, with its 2,000,000 and over inhabitants. That is to say, about 115,940 men own a vast area of about 126,000,000 acres of the best farming land in the world, and which should be divided among 10,000,000 people, and which is capable of giving support, self-employment, homes, and happiness to that vast number of people. And when we consider the further awful fact that about one-half of this vast expanse of 126,000,000 acres of land, which within the memory of men still living was parceled out by our Government to our citizens in small farms, is now at this early day absorbed by and owned by 31,546 men and corporations, the situation is still more alarming. In one of his speeches Daniel Webster once said: "A free government can not long endure where the tendency of laws is to concentrate the wealth of the country in the hands of a few, and to render the masses poor and dependent." In the light of the above facts, can there be any doubt as to the tendency of our present land laws, and that radical changes in our land laws are absolutely necessary?

The extent of many of these large estates is simply astounding, as is shown by the following list of a very few of the large land owners of this country:

	Acres.
Col. D. C. Murphy	4,068,000
Texas State Fund Association (owned by four men)	3,000,000

The Standard Oil Company	1,000,000
John D. Dwight, a farmer in North Dakota (nearly as large as Rhode Island)	704,000
Ex-Senator Dorsey	500,000
E. C. Sprague	500,000
Miller and Lux (San Francisco)	450,000
Mr. McLaughlin, of California	400,000
William A. Chapman	350,000
New York syndicate	300,000
Surveyor-General Beals	300,000
Texas Land and Cattle Company	240,000
Bixby, Flint & Co.	200,000
Thomas Fowler	200,000
Abel Stearnes	200,000
The Murphy family, of California	156,000
G. W. Roberts	140,000
Virginia Coal and Iron Company	100,000

But a still more alarming feature lies in the enormous alien ownership of our land. In addition to the numerous smaller alien holdings here, fifty-six foreign persons and corporations own more than 26,000,000 acres of our land—an area equal to that of the great States of Ohio, Kentucky, or Virginia. The enormous size of some of these holdings of land in this country by foreigners may be seen by the following partial list:

	Acres.
Baron Tweeddale	1,750,000
Byron H. Evans	700,000
M. Ellerhousen	600,000
Robert Tenant	530,000
Duke of Sutherland	422,000
W. Whaley, M.D.	310,000
Duke of Northumberland	191,460
Duke of Devonshire	148,626

Earl of Cleveland	106,659
Lord Dunmore	120,000
Benjamin Neugas	100,000
Earl of Carlisle	78,540
Sir W. W. Win	91,612
Duke of Rutland	70,039
Lord Houghton	60,000
Lord Daraven	60,000
Duke of Bedford	51,085
Earl of Brownlow	57,799
Earl of Derby	56,698
Earl of Cawdor	51,538
Lord of Londonsboro	52,655
Duke of Portland	55,259
Earl of Powls	46,095
Lady Willoughby	59,312
Earl of Yarborough	54,570

And there are hundreds of smaller foreign holdings of from 500 acres up.

The ownership of our land by foreign land syndicates is also simply astounding. A Dutch syndicate owns 4,500,000 acres of our land in New Mexico and adjoining Territories. Another Dutch syndicate owns 3,000,000 acres in Texas. An English syndicate owns 1,800,000 acres in Mississippi. A Scotch syndicate owns 500,000 acres in Florida.

Now, Mr. Speaker, it is impossible for me to do anything more than call attention to the foundation principle; but let me ask what has followed the violation of that principle and what should be the policy of the United States toward the few remaining million acres of land that it controls? No land should be finally alienated or given into absolute permanent private possession.

The beneficent results which would follow the adoption of the leasing policy instead of outright sale with our remaining public lands are clearly set forth in an address by Frederick S. Elder, professor of mathematics at the Oklahoma University, before the Oklahoma bar at Guthrie, January 6, from which I quote as follows:

DEFENSE OF A LEASING POLICY.

Mr. Chairman, Members of the Oklahoma Bar Association, and Citizens of Oklahoma: Two million fifty-six thousand acres is the measure of Oklahoma's present public-land endowment, and since seventeen-twentieths of this is expressly reserved for the support of education I shall feel justified in referring to the entire grant as the school lands in Oklahoma.

Eighteen months ago the lessees in Territorial convention passed and published resolutions to force the sale of these lands to themselves as "raw lands," and declared, with a vigor calculated to strike terror to the stoutest-hearted politician, "We pledge ourselves to the support of such men to the Territorial legislature as will do all in their power to bring the school lands on the market in accordance with the above resolutions." And it may be that with this threat in mind the State Capital, not without knowledge of the subtle operations of legislatures, was recently moved to cry out: "Who does not believe that they (the lessees) would control the first legislature and create a legislature that would sell the lands?"

It will be noted that those who desire to gobble Oklahoma's public lands threaten political annihilation to all who dare oppose their outright sale. It is the same old story again. Any men who dare oppose the demands of the shrewd and powerful, who insists that

in the treatment of this question, as of any other question, that the interests of the whole people should determine are met with the organized opposition of those who seek to live in the sweat of other men's brows, are threatened with political annihilation if they dare assert the equal right of all men to use the earth.

Turning back a few pages of history to discover what blunders Oklahoma should avoid, we find Ohio's grant of a million and a half acres, with no constitutional protection, becoming the prize of organized plunder. One lot of 10,000 acres went into perpetual lease at 12 cents per acre. The university endowment of two townships, 46,080 acres of the choicest lands of the State, is under perpetual lease at less than 10 cents an acre, and a third township of 23,040 acres is under perpetual lease at less than 25 cents per acre. Thousands of acres were sold for 50, 25, and 10 cents per acre.

Of course, a perpetual lease is equally as bad and in effect amounts to an outright sale. What Mr. Elder contends for, and which I also contend for upon this floor, is for a lease for a brief period of years with a reappraisal in the case of such land as is involved in this bill (remote, I assume, from present civilization) every fifth year.

That this system is entirely feasible, despite the implied criticism of my friend from Iowa, is shown in the figures which Mr. Elder quotes of the income which Oklahoma has received from its public lands.

Total net income from leasing Oklahoma's public lands for fiscal years ending June 30—	
1891	\$4,536.82
1892	21,346.13
1893	19,164.67
1894	46,586.29

1895	88,627.97
1896	71,740.68
1897	98,467.81
1898	173,442.83
1899	133,047.19
1900	177,190.24
1901	247,608.61
1902, cash bonus above rental in western counties	188,307.24
1903	323,245.60

Not a cent of this income raised by taxation but as a just equivalent for the valuable privilege of raising crops and making a living without having first to invest a fortune in a farm, and, contrary to the idea of any hardship having been worked upon the occupant, his great advantage over his land-owning neighbor is shown in the report of ex-Secretary Huston for 1902, where he says (p. 21): "Computing the interest on the value of similar lands at 7 per cent and adding the usual taxes, the investment of the landowner will be found to be two or three times the rental according to the last appraisalment."

It will be noted that Mr. Elder calls the rental paid by the lessees "a just equivalent for the valuable privilege of raising crops and making a living without having first to invest a fortune in a farm." Of course he here uses the customary terminology, which shows how far we have strayed from correct principles, that even a gentleman like Mr. Elder, when advocating the leasing system, speaks of it as a "valuable privilege," because under the lease system "it is not necessary first to invest a fortune in a farm." If the lease system had obtained from the first, no such idea could have grown up. It is only because we have followed the fatal, aye wicked, policy of England and European countries, that

anyone considers it a "valuable privilege" to be able to use land without first paying in as the purchase price a twenty-year capitalization of its rental value.

But perhaps the best illustration of the advantage of the leasing system is shown in his citation of the school lands of Chicago. He says:

The school lands of Illinois afford us the best illustration to be had of the surpassing advantages to the State of a system of leasing, of the manner in which a land endowment increases in value proportionately with the growth of population and of the necessity for a periodic revaluation of the land. I refer to the school lands located in the city of Chicago. The heart of the city from Madison street south to Twelfth and from State street west to Halsted was one school section, No. 16. Here is where the twelve and sixteen story buildings stand. Here you find the post-office, the Rookery, the Board of Trade, the Women's Temple, and scores of others like them. By some strange fortune hardly understood a block at State and Madison streets was reserved from sale with certain other sundry lots. These, with a few more tracts acquired later, are held to-day by the Chicago board of education and the ground rent amounting to half a million dollars annually is being turned into the school fund for the payment of teachers' salaries.

The leases are for fifty or a hundred years. The ground alone is leased and the lessees put up their own buildings, costing hundreds of thousands of dollars. Of these the Chicago Tribune pays \$30,000 a year for one-fifth of an acre, the McVicker Theater \$27,000 for thirty-six hundredths of an acre, Joseph E. Otis \$25,000 for eighty-eight thousandths of an acre, this last being at the yearly rate of \$289,115 per acre, and so on

for others. Yet nobody is wronged. It is a plain business proposition. No sane man pays more rent than he ought.

Neither is the community nor any individual wronged any more by the payment by the Chicago Tribune of \$30,000 into the school board treasury than by the payment by the Women's Temple Company of \$40,000 a year into the private pocket of Mr. Marshall Field for the use of lots that were once a part of the same original section 16.

How fatally defective the sale policy has been is clearly illustrated in two of the cases he cites, namely, the payment by the Chicago Tribune of \$30,000 into the school board treasury and the payment by the Women's Temple Company of \$40,000 a year into the private pocket of Mr. Marshall Field. When Mr. Field uses a part of the immense income which he is deriving from his ownership of a part of the original school lands of Chicago and builds a library therewith, we are invited to laud him as a public-spirited citizen. How much better it would have been for that city if, instead of alienating the larger part of its school lands, it had retained the unearned increment by leasing them, as in the case of the land beneath the Rookery and the Chicago Tribune buildings. If this had been done Chicago would not have to wait upon the "philanthropy" of any of its citizens, but would have an ever-increasing fund, which it could apply not merely to the erection of libraries and for the maintenance of its schools, but for every other communal purpose. Of course, it would not then have these ostentatious gifts of libraries or museums, but neither would it have its fearful contrasts which are directly due and are inseparable from this system of alienating the public

lands, viz, the existence on the one hand of the multimillionaire and on the other of hundreds of thousands who are practically paupers.

Even South Dakota has 1,531,900 acres of land under lease, or nearly four times the amount involved in this bill, so that I am warranted in assuming that the leasing system possesses no insuperable obstacles and is workable even in that State.

One of the most vivid illustrations of the result which follows the outright sale of public lands is cited by Mr. Elder in the case of the school lands in Blair County, Tex., which were sold at \$3 an acre on forty years' time at 4 per cent, now yielding the State of Texas 12 cents per acre, while the present owners are able to pocket the difference between 12 cents and three to four dollars per acre which they secure as rental from sublessees.

That the present system results in the creation of a large number of tenant farmers the census report clearly shows, but whereas the leasing system would result in the people, as a whole, obtaining the benefit of whatever increment of value might attach to these public lands as a result of increase of population, improvements in government, increase of transportation facilities, or from any other cause, the existing system results in this increment of value going into private pockets and in the building up of great private fortunes.

The census reports show in these agricultural States the following percentage of tenant farms:

State.	1880.	1890.	1900.
Ohio	19.3	22.9	27.5
Indiana	23.7	25.4	28.6
Illinois	31.4	34.0	39.3
Iowa	23.8	28.1	34.9

Kansas	16.3	28.2	35.2
Nebraska	18.0	24.7	36.9
Georgia	44.0	53.5	59.9
Alabama	46.8	48.6	57.7
Mississippi	43.8	52.8	62.4
Louisiana	35.2	44.4	58.0
Texas	37.6	41.9	45.7
Entire United States	25.6	28.4	35.3

More than one farm in three throughout the entire United States is a tenant farm.

As Mr. Elder well says, the Territory in which he lives, Oklahoma, will not avoid a tenant system by selling its land. It is rather a question as to who shall be the landlord and to whom shall be paid the ever-augmented rent which increase of population, etc., creates, whether it shall be paid to a State or Territory or to private individuals.

Mr. Speaker, by this bill you say to the individual, as has been said for generations in the past, that he who is smart enough, cunning enough, or shrewd enough to forestall the possible development of that community shall reap the enormous advantage that comes thereby; but that is not all. That is bad enough. It is bad enough that by such a policy you create the Astors, for instance, who are now receiving an annual rental value from land in the city of New York a hundred times in excess of the purchase price that John Jacob Astor paid for that land.

It is bad enough that by this act you are creating millionaires and multimillionaires, because I want to say that, with very few exceptions, such as tariff bounties and patents, you can trace the enormous wealth of the plutocrats of this country to the fact that they have been permitted to monopolize extremely valuable lands. It is not alone the land in the great cities that is

valuable and that creates millionaires, but these narrow strips of land which are called rights of way, running from New York to Buffalo, New York to Chicago and San Francisco, New York to New Orleans, from Chicago to New Orleans, and everywhere else over this country, these rights of way monopolized by private individuals are extremely valuable and are the basis upon which the enormous mass of "water" in their securities simply represents legalized power to extract tribute from the people and creates the millionaire and the multimillionaire in the United States, as it has created the millionaire in every other country in the world.

WATER IN RAILROAD STOCKS.

How large a proportion of the stocks and bonds of the railroads of the United States is water—i.e., represents no tangible assets, but merely the capitalization of tribute—is indicated in the statement made to me on more than one occasion by a gentleman who was one of the great railroad lawyers of the country, Thomas G. Shearman, who had not only been attorney for some of the great railroad systems—among others, for James J. Hill, of the Great Northern—but at the time of his death was counsel of that great Rockefeller institution, the National City Bank. Mr. Shearman repeatedly said, "that neither the preferred nor the common stock of the railroads of this country represented any actual investment of capital (if we exclude money paid and stock issued to legislators—not legislatures—for their franchises), but that the railroad as a whole had not originally cost to exceed 85 per cent of the par of the bonds; that from 25 to 50 per cent of the preferred was issued as an extra inducement to the bankers who bought the bonds, and that the

balance of the preferred and practically all of the common stock was divided between the promoters of the railroad, the legislators, and the intermediaries who secured the franchises.

Now, Mr. Speaker, what should be the policy of the United States? The policy of the United States should be to lease these lands and all other lands which it owns; to lease them for short periods of years, and at the end of such short period let there be another leasing, giving to the Government whatever increment of value has attached to those lands by reason of the increase of population that has taken place in the meantime, by reason of the increase of invention, by the improvements of government, or anything else. For you must remember that there is no invention, there is no improvement of government, fire, police, or anything else, there is no increase of population, but what adds to the value of land. The policy of the Government, as I say, should be to lease the land for brief periods, and at the end of those periods of lease the land should be reappraised and men should be permitted to bid, and if some one else beside the owner of the improvements gets the land of course he would be recompensed the full value of the improvements.

Mr. LACEY. I should like to ask my friend how many orchards, he thinks, would be set out in Dakota and Iowa if a man had a three years' lease on the land and the chance of somebody else taking it away from him at the end of that time?

Mr. BAKER. I will answer the gentleman from Iowa by saying that I have said nothing whatever about the length of the period of lease. My own judgment, however, is that it ought not to be more than five years. Therefore, I will meet his question. Let me say to the gentleman that if the owners of the land are

assured, as they will be, that they shall have the preference of opportunity to secure the new lease, there will be no difficulty. And I will say that the people of the United States are not going to pass any law interfering with the present system of land tenure that does not to a very large extent favor the men who are in possession of the land. Why, the whole system has been to favor those men in the past.

My friend from Iowa asks "how many orchards would be set out in Dakota and Iowa if a man had a three years' lease on the land and the chances of somebody else taking it away from him at the end of that time."

I do not imagine that the people of Iowa or South Dakota are much different from those of Illinois. In the latter State one man, really an alien, Lord William Scully, of London, owns from fifty to sixty thousand acres of the best farming land there. We are told "that he rents it at the highest cash rental, requires the tenants to build their own houses, barns, etc., and until the State prohibited it they had to pay the taxes on the land. Since then he has added the tax to the rent." From his tenants he receives about \$150,000 per annum for the privilege of merely existing on *his* soil.

This shows not merely that men will rent land, but that they are doing so on a large scale from private individuals, and I want to call the attention of the gentleman from Iowa to this, for here they not merely lay out their own orchards, but they build their own houses, barns, etc., upon this rented land. And they are compelled to do so because of the policy which is perpetuated in this bill under which individuals are encouraged to engage in land speculation on a gigantic scale.

They are encouraged, aye, almost invited, to engage in the shameful practices I have referred to. Because of the tremendous prizes which this system offers, fraud, robbery, and sometimes arson are engaged in. Any and all means are adopted by the shrewd, cunning, and unscrupulous, who are frequently even in these cases the rich and powerful, to get title to immense tracts of the public land, not for occupancy and use, but to withhold from use, for the more land thus withheld the greater premium these men can squeeze out of the real settlers either in original purchase price or in annual rentals. That even the possession of great wealth does not deter men from engaging in such practices is shown in the decisions of the General Land Office, volume 12, January 1 to June 30, 1891, which, on page 34, recites:

That during the month of April, 1877, 151 desert-land entries were filed in that (Visalia, Cal.) land office, covering 34,978 acres, which at once passed into the hands of Mr. J. B. Haggin, and for which he paid to the receiver \$8,744.45. Haggin's claim was that he had loaned money to these 151 entrymen, and that they had assigned to him their "final certificates."

What the present value of these 35,000 acres of land may be I have no means of knowing, but it is quite possible their ownership thus obviously fraudulently acquired is the basis of at least one of the millions he is reputed to possess.

Time and time again we are told that perpetual ownership of the fee is absolutely essential to induce men to cultivate the land. It is constantly asserted that unless the land is sold for all time the occupier will not improve it; that, according to the inference of the query of my friend from Iowa, no one will plant orchards thereon. This, in the face of the fact that for

over three hundred years the leasing policy—the policy of paying the royalty for the use of the land into the public treasury instead of into private pockets—obtains in Freudenstadt, Germany, as set forth in an article by Henry Labouchere in his paper, the London Truth. He says:

For instance, there is Freudenstadt, a hamlet in the valley among the Alps in the southwestern part of the German Empire, 45 miles of Stuttgart. That region has been favored with but few natural resources; but between three and four hundred years ago an old monk got the notion into his head that, while whatever a man produced by his labor might belong to him individually, whatever natural wealth or resources were found in a given region belonged equally to all the members of the community inhabiting that region. This theory and practice has been pursued ever since. In this region are some pits of valuable fire clay, which the people dig and pile up for purchasers. The men who do the digging receive day's wages; but when the clay is sold the pay for the clay itself—what is called "royalty"—goes into the treasury. Upon the hillsides is some surplus timber. The men who cut down and pile up the timber are paid day's wages; when the timber is sold its value as it stood uncut upon the stump—in short, the "stumpage"—goes into the treasury.

What a pity a few thousand such monks, intelligent in economics, did not come to this country instead of the William Penns who transplanted here the English system of selling the land.

The income from these sources pays their share of the tax levied for the support of the German Empire, pays all their own officials, builds their schoolhouses and pays their teachers, builds their

churches and pays their priests. The people have not been taxed a cent in three hundred and fifty years. Their income always exceeds their expenditures. In 1882 this surplus was divided among the inhabitants per capita, each man, woman, and child receiving (in terms of our money) \$13.55. The amount distributed in 1883 would have been \$16.55, but the citizens voted to apply it to building waterworks.

The folly of the present system of permanently alienating the land is clearly set forth in Mr. McCreery's article, from which I quote:

The refusal of the Government to use for its own support the rental value of its ordinary land, the royalty of its minerals, the stumpage of its timber, etc., renders it necessary to pass other laws most oppressive, unrighteous, and demoralizing. The tariff laws, inciting to smuggling, provoking perjury in undervaluation, and when honestly enforced woefully discriminating against the poor man. Internal-revenue laws, inducing the making of "moonshine" whisky, the murder of revenue officers, and other forms of lawlessness.

But when I ask the average farmer, "Would you not like such a change in the tax laws as would relieve you of one-half the tax you are now paying, and place it on the shoulders of the land speculators, the mine owners, the timber syndicates, the oil companies, and others who are now enriching themselves by monopolizing the bounties of nature?" he answers, "The old plan, by which I and my ancestors have been fleeced in the past, is good enough for me." When I ask the average laborer, "Would you not like a system of taxation that would furnish employment to a million more workingmen than can now find employment [half a million in the cities and

another half a million in the country] and raise the wages of all?" he turns upon me with a sneer and says, "You are a crank and an anarchist. Go hence!"

I could very well afford to go, for while the farmer and the workingman are paying twice the tax they need to they are also paying at least half of mine. But alas! this is not merely a question as to which shall pay his own or the other's tax, but one of honesty or morality and national welfare. Aside from the fact that our system of land laws opens invitingly wide the door to gigantic frauds upon the Government and upon individuals and offers an enormous premium on perjury, their effect, even when enforced in strict accordance with the intent of the legislative power that enacted them, is conspicuously pernicious.

He says:

If it be demoralizing to train a nation to become a set of liars when confronted by tax assessors or custom-house officers; if it be demoralizing to educate the young to the idea that labor is degrading and that the most respectable and honorable thing in life is to enrich one's self by being a parasite upon one's fellow-creatures; if it be demoralizing for the Government not only to throw away its richest treasures, but to do so upon a lottery plan which encourages gambling and a horde of kindred vices; if it be demoralizing to increase the number of the landless multitude who have no stake in the welfare of our nation; if it is demoralizing to have a million idle men among us, necessitating a "slum" ward in every city and a great army of tramps traversing the country, then I have proved the proposition that, in addition to being the prolific parent of fraud and perjury, our land laws, even when honestly and faithfully

administered, are a source of widespread and woeful demoralization.

You say, if you do not permit private ownership, there will be no security of tenure; there will be no inducement for people to go on and improve their land. To any man who cares to make that statement upon this floor I wish to say that some of the greatest buildings in the city of New York are situated upon leased land—that some of the most valuable buildings in the city of New York have been erected upon leased land, upon land owned by the Sailors' Snug Harbor corporation, land that for generations has been leased from time to time. The entire usufruct of that land goes to that private corporation—the Sailors' Snug Harbor—and does not go to the men who own the buildings, who use the buildings, and carry on great mercantile affairs. Yet you will say that it is necessary that there shall be permanent private ownership of land before men will engage in business enterprise.

Mr. Speaker, go into any one of the large cities of the United States and what will you find? You will find hundreds of thousands of individuals congregated in such a small area that it is scarcely possible for them to breathe separately. The crowded condition of New York City, the crowded condition of Chicago, the noisome slums that exist in those and other cities and that also exist right here in the capital of the United States, are directly due to this policy of encouraging people to withhold land from use, so that they may be able to exact an ever-increasing tribute from those who subsequently use it, after paying a brigand's ransom for it.

I have said that the existence of slums in our great cities is directly traceable to the policy which is

continued in this bill of selling the public lands outright. This policy of outright sale, together with the policy of assessing unused land at but a fraction of its value, creates overcrowding—that is, the slums—and which has been recently shown to exist right here in Washington to an alarming degree. To what extent land speculation is encouraged in the District of Columbia by this foolish policy of almost entirely exempting unused land from taxation is shown in the case of Paul T. Bowen, who in January, 1896, then being a clerk in the Treasury Department, purchased 2.3 acres of land in the northwestern part of the District, near Chevy Chase, for \$1,840. When he bought it it was assessed at \$225 an acre. The following year the assessment was reduced to \$200 an acre as "agricultural" land at \$1 on the \$100, and was continued at that rate until January, 1901, when he sold the land for \$5,000, making a net profit of \$3,137—170 per cent—in five years. This land sold for about \$2,200 an acre and was assessed at \$200 an acre—about one-eleventh of its value. I suppose the assessors assessed it as "agricultural land" so as to help the farming industry.

The following from the Washington Post gives but one illustration of the results that follow this encouragement to land speculation:

[Washington Post, January 8, 1902.]

The object of the resolution, argued Mr. M. I. Weller, was to provide for an equilization of taxation and proper valuation of those parcels of land held for speculative purposes. The Government recently acquired for \$75,000 a plot containing 7½ acres from a tract of 250 acres. The portion bought by the Government was about one-thirtieth of the whole, and the property was valued by the assessors at \$85,000. The actual

valuation tract was about \$1,200,000, and in the opinion of real estate men the price paid by the Government was by no means high. Another instance of the same kind, though more startling, was shown by Mr. Weller. The Government, he declared, recently acquired another piece of property beyond the city limits, for which \$25,000 was paid. He had the curiosity to look up the valuation on the assessment books and found it to be \$1,400—less than 6 per cent of the amount the Government paid for it.

One of the disastrous effects which have followed our adoption of the English land system, which is perpetuated in this bill, is set forth in an editorial paragraph in a recent issue of the Public, a paper which I stated on a previous occasion discusses current affairs in a manner that can not help but clarify the thought of those who read its editorials:

How American sympathy went out to the evicted Irish some years ago, when as many as 3,000 families were turned out of their houses for nonpayment of rent! But 60,463 families were evicted in the city of New York, Manhattan Borough alone, during the year 1903 without exciting special wonder. Yet where is the difference? Apparently the only difference is in the fact that New York evictions last year were about twenty times as many as in the worst year of Irish evictions. In proportion to population the disparity is much greater. Whereas the Irish evictions of the heaviest year numbered about 1 to every 1,300 of population, those of New York numbered about 1 to every 35 of population.

Doesn't this constitute an indictment of the present system of selling the public land, thus encouraging land

speculation, which has produced the same evils here as have afflicted Ireland for generations?

I have said that our policy of permanently alienating the public lands was copied from England. That is true. I wish I could say it is also true that this country is ready to follow England in a change in this very policy which she seems to be on the eve of making, or at least which she gives unmistakable signs of being likely to do in the near future. My Republican friends some five years ago suddenly became such great admirers of England and the policy of territorial aggrandizement of her Tory ministers that they "benevolently assimilated" the Filipinos. Recently they have been even more warm in their expressions of admiration for Joseph Chamberlain's cynical, retrograde policy. No more are we told that it is necessary to twist the British lion's tail on every occasion that offers; on the contrary, our American Tories even seemed to be about to invite that renegade radical, Chamberlain, who is out-Torying the Tories, to come over here and take charge of the rapidly approaching campaign for "protection and plutocracy"—I beg pardon, for "protection and labor."

I admit that their pro-Chamberlain ardor has apparently somewhat cooled with the English election returns of the past six weeks. With constituency after constituency, rural as well as urban, recording themselves against a reimposition of the corn laws or any other form of protection, our Republican friends are probably not quite so sanguine of what will come out of a British general election.

While it is gratifying to observe that Chamberlain is not succeeding in his attempt to hoodwink the British workingman into believing that he can lift himself up by his boot straps—that he can tax himself rich, that a tax upon foodstuffs will benefit him—it is even more

gratifying to observe that the Liberal party there, the prototype of the Democratic party here, is not content to meet Mr. Chamberlain with the mere negative proposition of "leaving well enough alone," nor to emulate Mark Hanna in his "stand-pat" policy, but are rather showing an unmistakable disposition to go to the root of the matter.

One of the great London magazines, the *Contemporary Review*, has in its January number an article entitled "The need of a Radical party." If written for American consumption, I suppose it would have called it "The need of a radical Democratic party."

This article, in describing what is needed to combat and successfully overthrow the revival of protection, says:

[From *Contemporary Review* for January.]

There remains the condition of a great question which will fire men's imaginations with the feeling of a distinct and vital need. Can there be any doubt that the land question answers to this description? "Man is a land animal," says Henry George, and in England man and the land are parted. It is not surprising, therefore; that not one, but a thousand currents of thought flow into this channel. What, for example, is the one solid feature of the national economy which gives force to the revival of protection? The decline of agriculture, the fact that a yearly decreasing body of Englishmen live and work on the soil, and a yearly decreasing proportion of food is raised on English land. From 1851 to 1891 the number of agricultural laborers has declined 36 per cent; during the ensuing ten years a further decline of 25 per cent has taken place, while in fatal testimony to the tendency to make land the sporting ground of the rich rather than the patrimony of the entire

people, the number of gamekeepers has increased 25 per cent in the same period. Is it possible to state a fact of greater social significance?

It may be profitable to ask right here why the number of English agricultural laborers has declined 52 per cent in fifty years, while gamekeepers have increased 25 per cent during that period. The answer is not hard to find. It is found in a system of taxation in England, as here, which places nearly all the burden of local taxation upon improvements and upon personal property, while land values almost escape taxation. Let England but reverse this policy. Let her exempt improvements and other forms of labor products from taxation and place the burden of taxation where it naturally belongs—on land values—and her dukes, marquises, and earls will no longer find it profitable to breed rabbits and foxes. The land will then be cultivated, and farm laborers will not need to immigrate here or to Canada to look for employment. It is land monopoly, made possible because land is not taxed according to its value, that drives the farm laborer from the country of his birth, while gamekeepers are employed to drive his fellow off of "my lord's" land. Our policy of selling the public lands and then placing the burden of taxation upon the settlers' improvements, while the land speculator almost entirely escapes, is producing in America the same evils.

The writer goes on to describe further the desertion of English fields and the degradation of the landless laborers, and asks: "What are the remedies?" He answers:

Not the discredited device of protection, which the laborers will not have at any price, but the reform of our land system, for that system

furnishes the most effective bar to the application of the wonderful discovery that the old Malthusian specter of the pressure of population on the means of subsistence is laid forever, and that, as Prince Kropotkin shows, the land of England could sustain out of its own resources not merely the foreign-fed multitudes of to-day, but double and treble that number.

The writer continues:

Municipalities, distracted with the growing burden of improvements, the increasing difficulties of traction and urban extension, the appalling evils of overcrowding, are rapidly coming to Mr. Booth's conclusion that the taxation of ground values lies at the root of the housing problem.

As it is inevitable that we in this country must ultimately conclude.

The article then shows the reasonableness of this method of taxation and violently attacks Mr. Chamberlain's proposals, calling them a "monstrous piece of economic atavism"—an attempt to shift more and more of the burdens of the state upon industry and wages.

The conclusion of the author is that "the land question is ripe for action."

The Contemporary Review is not alone in pointing to the taxation of land values (in England sometimes termed the "taxation of site values," at other times "taxation of ground rents") as the policy which the Liberal party must adopt to successfully and completely defeat Chamberlain's protectionist propaganda, for the London Speaker, the leading Liberal weekly, in its editorial of January 9, says:

We have to attack not merely the false remedies the protectionists are offering us, but the real abuses and injustices they are defending.

It proceeds:

For this reason we are delighted to notice the emphasis laid by the Independent Review on the necessity of land reform, a subject which occupies two articles in the January number of that periodical. The first article, presumably from the pen of the editor, destroys in a terse and luminous retrospect the historical defenses for land monopoly; the second, written by Mr. Charles Trevelyan, sets out some of the arguments for the taxation of land values. Our own strong opinions in favor of treating this question as one of immediate urgency have been expressed often enough in these columns.

The Speaker urges the Liberal party to grapple fearlessly with the land problem, and says "the case for action is unusually strong."

Mr. Chamberlain proposes to increase the price of food without relieving at all the pressure of rent, and if the Liberal party can not offer the country some real measure of reform its place in the scheme of progress is forfeited. We hope, then, that there will be no hesitation in the Liberal party about grappling with this problem in its various aspects, for the land question is just as important in the country as in the town.

The SPEAKER. The time of the gentleman has expired.

Mr. BAKER. I ask unanimous consent to extend my remarks in the Record.

The SPEAKER. The gentleman from New York asks unanimous consent to extend his remarks in the Record. Is there objection? [After a pause.] The Chair hears none.

Mr. STEPHENS of Texas. Mr. Speaker, I desire to offer an amendment to one section of the bill.

Mr. BURKE. I do not think it would be in order to offer an amendment. I cannot accept it.

The SPEAKER. The gentleman is entitled to an hour, and after the expiration of that time the bill is open to amendment, unless the previous question operates.

Mr. BURKE. Well, I do not yield to an amendment, Mr. Speaker.

Mr. STEPHENS of Texas. I will say to the gentleman that I am in favor of the bill. I believe it is correct in its policy. I believe that these reservations should be opened up, but I do not believe in the provision of the bill that provides that after the four years' time has elapsed that the remaining portion of the unsold land should be sold in unlimited quantities under such rules and regulations as the Secretary of the Interior may prescribe. I desire to offer an amendment providing that the amount sold to any one man shall not exceed 640 acres. I would limit it to 160 acres if it were agricultural land, but I presume all the agricultural land will have been taken within the four years and that there will be no agricultural land to be taken up.

Mr. BURKE. Does the gentleman want to limit the amount to 640 acres?

Mr. STEPHENS of Texas. Yes; to 640 acres.

Mr. BURKE. Is that all that the amendment provides?

Mr. STEPHENS of Texas. That is all that part of the amendment provides.

Mr. BURKE. I do not object to that.

Mr. STEPHENS of Texas. There is another amendment which I think should be made to this bill. If there were valuable minerals in this land the minerals should not pass with the land and be subject to entry. I believe

that the miners are entitled to as much consideration as the homesteader.

Mr. BURKE. There is a general law that protects that.

Mr. BAKER. I desire to offer an amendment.

The SPEAKER. The Chair will again state to the gentleman from South Dakota that he is recognized for an hour.

Mr. BURKE. I understand that, Mr. Speaker.

The SPEAKER. And that the bill is subject to amendment unless the gentleman at the end of that time asks the previous question.

Mr. BURKE. I stated that I had no objection to the amendment offered by the gentleman from Texas, to limit it as he states, and after the disposition of that I shall ask for the previous question upon the bill and amendments to its passage.

The SPEAKER. The Chair will state to the gentleman from South Dakota that the Chair understands the rule to be this: In the hour that the gentleman controls the bill is not subject to amendment, and that so far the amendments have been read for information. Now, if the gentleman yields the floor the bill will be subject to amendment.

Mr. BURKE. I am not yielding the floor, Mr. Speaker, and I ask for the previous question.

The SPEAKER. The previous question is asked for.

Mr. BAKER. I shall object, Mr. Speaker, unless I can have an opportunity to offer my amendment.

Mr. BURKE. I ask that the bill be amended as suggested by the gentleman from Texas.

Mr. BAKER. Mr. Speaker, I object.

The SPEAKER. The gentleman from South Dakota asks unanimous consent—

Mr. BAKER. I object, Mr. Speaker, unless I can have an opportunity to offer my amendment. You can vote my amendment down in a second.

Mr. BURKE. Do I understand that the amendments of the committee are now considered as pending?

The SPEAKER. The amendments reported from the committee are pending. The gentleman from South Dakota can offer an amendment if he sees proper, and then call the previous question. He can test the sense of the House at any time he desires.

Mr. BURKE. Mr. Speaker, I offer the following amendment:

The SPEAKER. The Clerk will report it.

The Clerk read as follows:

After the word "interior," in line 12, page 10 of the bill, insert the words "not more than 640 acres to any one purchaser."

Mr. STEPHENS of Texas. That covers the ground of my amendment.

On motion of Mr. Burke, the previous question was ordered.

The question was taken on the amendment and the amendment was agreed to.

Mr. BAKER. Mr. Speaker, a parliamentary inquiry. Do I understand I can not now offer an amendment?

The SPEAKER. The previous question is now operating.

Mr. FINLEY. Mr. Speaker—

The SPEAKER. For what purpose does the gentleman rise?

Mr. FINLEY. Merely for a matter of information. I wish to call the attention of the gentleman from South Dakota to his proposition to amend the amount of appropriation by reducing it from \$9,000 to \$75,000.

Mr. BURKE. I am going to offer that at the proper time. I move to amend, Mr. Speaker, in section 5, in line 10, to strike out the word "ninety" and insert "seventy-five."

The SPEAKER. Is there objection?

Mr. BAKER. I object.

The SPEAKER. Objection is made. The question is on the engrossment and third reading of the bill.

Mr. FINLEY. I move to recommit the bill with instruction to report back a reduced appropriation from \$90,000 to \$75,000, in line 10, page 11.

The SPEAKER. The gentleman from South Carolina moves to recommit the bill with instructions to the committee to report the same back immediately with an amendment, striking out the word "ninety" and inserting the word "seventy-five" in line 10, page 11; so as to make the appropriation \$75,000 instead of \$90,000.

Mr. BURKE. Mr. Speaker, a parliamentary inquiry. What will be the status of the bill if the gentleman's motion prevails?

The SPEAKER. It will have to be reported back by the committee forthwith if this motion is adopted.

The question was taken; and the motion was agreed to.

Mr. BURKE. Mr. Speaker, I report back the bill H.R. 10418 with an amendment, in accordance with the direction of the House.

Mr. BAKER. A parliamentary inquiry. Has the committee had a meeting?

Mr. BURKE. I now ask the previous question on the bill and the amendments to its passage.

Mr. BAKER. You can not—

The SPEAKER. One moment. The Chair is informed, and his recollection without the information concurs

with the information, that this is the usual proceeding and that there are precedents. The Clerk will read section 1022 of Hinds's Parliamentary Practice.

The Clerk read as follows:

Sec. 1022. A bill may be recommitted with instructions that it be reported back forthwith, and this report may be made at once by the chairman of the committee and is not subject to the point that it must be considered in the Committee of the Whole if it has previously been considered there.

Mr. BURKE. Mr. Speaker, I now ask the previous question on the passage of the bill and the amendments.

Mr. BAKER. A parliamentary inquiry, Mr. Speaker. Do I understand that under the rules it is not necessary for the committee to meet when the bill was recommitted?

The SPEAKER. Such has been the practice with such instructions.

Mr. BAKER. All right; I want to get that clear. Now I ask unanimous consent to offer an amendment. The fate of that amendment is known. Probably there will not be another vote for it in this House.

The SPEAKER. The gentleman from New York asks unanimous consent to offer an amendment. Is there objection?

Mr. MARTIN. I object.

The SPEAKER. Objection is made. The question now is on the engrossment and third reading of the bill.

The question was taken; and on a division (demanded by Mr. Baker) the ayes were 110 and the noes 1.

Mr. BAKER. Mr. Speaker. I make the point of no quorum.

The SPEAKER. The gentleman from New York makes the point of no quorum.

Mr. BURKE. Mr. Speaker, I ask unanimous consent that the gentleman from New York may be permitted to offer his amendment. [Laughter.]

Mr. BAKER. I withdraw my point of no quorum, Mr. Speaker.

The SPEAKER. The gentleman from South Dakota asks unanimous consent that the gentleman from New York may offer an amendment.

Mr. MACON. I object.

Mr. BAKER. I raise the point of no quorum, Mr. Speaker.

Mr. PAYNE. Evidently, Mr. Speaker, there is no quorum, and we can vote on this Monday morning to accommodate my friend from New York. I move that the House do now adjourn.

The SPEAKER. Pending that, the Chair will submit the following personal request:

LEAVE OF ABSENCE.

By unanimous consent, leave of absence was granted to Mr. Badger indefinitely, on account of important business.

ADJOURNMENT.

The motion of Mr. PAYNE is then agreed to.

Accordingly (at 3 o'clock and 45 minutes p.m.) the House adjourned until Monday next at 12 o'clock noon.

[38 Cong. Rec. 1467 (1904)]

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. W. J. Browning, its Chief Clerk, announced that the House had passed the following bills:

* * *

A bill (H.R. 10418) to ratify and amend an agreement with the Sioux tribe of Indians, of the Rosebud Reservation, in South Dakota, and making appropriation and provision to carry the same into effect;

[38 Cong. Rec. 1468 (1904)]

HOUSE BILLS REFERRED.

The bill (H.R. 10418) to ratify and amend an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation and provision to carry the same into effect, was read twice by its title, and referred to the Committee on Indian Affairs.

[38 Cong. Rec. 1469 (1904)]

SIoux TRIBE OF INDIANS,
SOUTH DAKOTA.

The SPEAKER. The gentleman demands the regular order. The regular order is the motion for the previous

question demanded by the gentleman from South Dakota.

The previous question was ordered.

The SPEAKER. The question now is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, read the third time, and passed.

[38 Cong. Rec. 1601 (1904)]

REPORTS OF COMMITTEES.

* * *

Mr. GAMBLE, from the Committee on Indian Affairs, to whom was referred the bill (H.R. 10418) to ratify and amend an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation and provision to carry the same into effect reported it without amendment, and submitted a report thereon.

[38 Cong. Rec. 4984-4988 (1904)]

ROSEBUD RESERVATION LANDS.

Mr. GAMBLE. Will the Senator from Iowa yield to me that I may move to proceed to the consideration of House bill 10418?

Mr. ALLISON. I understand that these are House bills—there are three or four of them—and that they

will not give rise to any further debate or, at least, not to any extended debate. I yield, therefore, to the Senator from South Dakota.

Mr. GAMBLE. I move that the Senate proceed to the consideration of the bill (H.R. 10418) to ratify and amend an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation and provision to carry the same into effect.

The motion was agreed to; and the Senate, as in Committee of the Whole, proceeded to consider the bill, which was read.

Mr. HALE. Mr. President, is there a report in this case?

Mr. GAMBLE. There is a report, but it is quite lengthy.

Mr. HALE. Let the report be read, Mr. President.

* * *

ROSEBUD RESERVATION LANDS.

Mr. CULLOM. If there is nothing pending before the Senate, I should like to call up a bill.

The PRESIDENT pro tempore. There is a bill now pending.

Mr. CULLOM. I did not know that.

Mr. TELLER. What is the pending bill?

The PRESIDENT pro tempore. The bill (H.R. 10418) to ratify and amend an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation and provision to carry the same into effect, is before the Senate as in Committee of the Whole. The reading of the report has been called for, and it will now be read.

The Secretary read the report submitted by Mr. Gamble on February 4, 1904, as follows:

The Committee on Indian Affairs, to whom was referred the bill (H.R. 10418) ratifying and amending an agreement with the Sioux tribe of Indians of the Rosebud Reservation in South Dakota, and making an appropriation and provision to carry the same into effect, having had the same under advisement, make the following report and recommend that the bill do pass.

The bill in question was very fully and carefully considered by the Committee on Indian Affairs in the House, and an extended report recommending its passage was submitted thereon. The present bill is substantially the same as H.R. 50, upon which the report of the Department is based. It was modified to conform to the recommendations of the Department and reintroduced as H.R. 10418.

The subject matter of the measure is so fully covered by the House report thereon, the substance thereof is hereby adopted and made a part of this report.

[From House Report No. 443, Fifty-eighth Congress, second session]

The purpose of this bill is to ratify and amend an agreement made with the Rosebud Indians in South Dakota by Inspector James McLaughlin, dated September 14, 1901, providing for the cession to the United States of the unallotted portion of their lands in Gregory County, S. Dak., and opening the same to settlement and entry under the homestead and town-site laws.

The area of the reservation embraced in Gregory County proposed to be ceded under this agreement is 416,141.24 acres. There are 452 Indians holding allotments in the county, aggregating 104,999 acres.

The agreement, as made with the Indians, provided that the United States should pay for the land at the rate of \$2.50 per acre, and from the proceeds \$250,000 was to be expended in the purchase of stock cattle for the benefit of the Indians, and the balance was to be paid per capita in cash, in five annual installments. A bill for the ratification of this treaty and opening the land to settlement was transmitted by the Secretary of the Interior to Congress in the first session of the Fifty-seventh Congress. This bill provided simply for a ratification of the treaty and that the lands were to be disposed of under the provisions of the homestead law at \$2.50 per acre.

The bill was reported by this committee and was also favorably reported by the Committee on Indian Affairs in the Senate and passed the Senate. It appearing that the House was opposed to the passage of the same, a new bill was presented late in the second session of the Fifty-seventh Congress, substantially the same as the present bill not under consideration, which was favorably reported by this committee, but too late in the session to have consideration in the House.

Both of these bills present a new idea in acquiring Indian lands, and if this bill should be enacted into law it will establish a new policy and be a departure from the policy that has long since prevailed in acquiring Indian lands, as heretofore it has been the practice and policy of the Government to purchase lands from the Indians and pay them therefor and then open the same to entry and settlement, and if not immediately,

ultimately, under the provisions of what is known as the "free-homestead act."

This bill provides that the lands shall be disposed of under the homestead laws by the settler paying therefor and the proceeds paid to the Indians, and it is expressly provided by section 6 of this bill that the United States shall in no manner be bound to purchase any portion of the land except the school sections, or to dispose of the same except as provided, or to guarantee to find purchasers for said lands, it expressly stating that the intention of the act is that the United States shall act as trustee for the Indians in disposing of the lands and pay over the proceeds from the sale thereof only as the same are received.

The provision that \$250,000 of the amount received shall be expended for purchase of stock cattle is in accordance with the original treaty and is considered a wise provision, as it will be better for the Indians than to pay them entirely in cash, and thus enable them to better become self-supporting.

The bill further provides that not more than \$150,000 in cash shall be paid to the Indians in any one year, which is also substantially the same as the treaty provides. Section 4 of the bill provides that sections 16 and 36, or the equivalent of two sections in every township, shall be ceded to the State of South Dakota for school purposes and paid for by the United States at \$2.50 per acre, and section 5 provides for an appropriation of \$90,000 for this purpose. This is in conformity with the guaranty given to the State of South Dakota by Congress in the enabling act, which provides that in any reservation opened to settlement subsequent to the admission of the State into the Union sections 16 and 36 would be reserved and ceded to the State for school purposes.

The provision of the bill for payment for the land by settlers in installments is deemed a wise one, as it will make it easy for the settler to pay for the land and will also provide a fund to pay the Indians an annual per capita cash payment.

The price of the land is fixed by the bill at \$3 per acre for all that is entered during the first six months after the same shall be opened to settlement and entry, and the price thereafter to be \$2.50 per acre, with a provision that at the expiration of four years from the taking effect of this act all lands remaining undisposed of shall be sold and disposed of for cash, under rules and regulations to be prescribed by the Secretary of the Interior.

There is no question but what the Indians have no use for the land that is proposed to be ceded by this bill; that the tract is only a very small portion of the Rosebud Reservation, and is really only a corner of the reservation, which will be left compact and in a square tract and a reservation about equal in size to the Pine Ridge Reservation, in South Dakota.

That in disposing of it the said Rosebud Indians will receive a per capita payment of \$30.50 each year for a period of five years, aggregating \$152.50 to each man, woman, and child, and it is thought that this payment and the matured increase that will be marketable from the stock cattle that will be given to the Indians under the terms of this bill will put them in a condition much more self-supporting than they are at present and relieve the Government from the responsibility and expense of caring for them.

Inspector McLaughlin, who negotiated the treaty with these Indians, in one of the councils said:

"The census rolls show 4,917 persons belong to this agency, which would give an annual per capita

allowance of \$30.50; that is, \$30.50 once a year to each man, woman, and child for a period of five years, aggregating \$152.50 that each man, woman, and child would receive in the five years.

"At the expiration of five years, when this per capita payment would end, the matured increase derived from your stock cattle would then be marketable and continue to furnish a large number of beef cattle annually thereafter which would place you upon an independent footing, and with proper care of your cattle would insure you a regular annual income. * * * Then the stock cattle, which, if properly cared for, will bring about a great deal of prosperity among you people. And in the third place, the cash payment for five years, which would enable you to take care of your families without any suffering until you begin to receive returns from the marketable cattle, the increase of the cattle that will be issued to you."

The passage of this bill will open for settlement 416,000 acres of land, which will be settled upon, cultivated, and improved, and turned into actual homes. This will enhance very materially the value of the 452 Indian allotments which are within the area proposed to be ceded, and it will also bring the Indians into contact with their white brothers, and give them the benefit of learning how to farm and raise stock from actual observation, and it will tend to make them more self-supporting, and be a great improvement upon their present condition, many of them being dependent upon the bounty of the Government, and the sooner Indian reservations are broken up and the Indians required to take their allotments and their surplus lands opened to settlement, the better it will be for the advancement and higher civilization of the Indian.

The principal question that the committee has had to determine in relation to this bill is whether or not Congress has the right, and whether it should legislate to dispose of Indian lands without the consent of the Indians, and whether it would be proper to pass this bill without providing for submitting it to the Indians for their ratification and approval, in accordance with existing treaty stipulations. As to the power of Congress to so legislate there can be no question. That Congress has heretofore so legislated is established by the passage of a bill ratifying and amending a treaty with the Kiowa, Comanche, and Apache tribes of Indians in Oklahoma; the bill ratifying and amending said treaty was reported from this committee in the first session Fifty-sixth Congress (see H.R. 342, 56th Cong., 1st sess.), and the principal objection urged against the ratification of the treaty in that case was that it was not signed by three-fourths of the adult male Indians of the tribe, as provided by existing treaty stipulations.

The bill, however, was enacted into law, and subsequently the validity of the law and the right of Congress to legislate without the consent of the Indians was decided by the Supreme Court of the United States in the case of *Lone Wolfe v. Hitchcock*, January 5, 1903 (187 U.S. p. 553), and in this connection attention is called to the report upon H.R. 50, made by the Commissioner of Indian Affairs, under date of January 9, 1904, which report, with a letter of the Secretary of the Interior, is herewith submitted, and the full decision in said case is also herewith appended.

While the committee recognized the right of Congress to legislate without consent of the Indians, it is not prepared to say that it should do so in all cases, and only where after mature consideration it appears that the Indians will be benefited thereby, and that the circumstances justify such legislation.

In this instance, there is a treaty executed strictly as provided by former treaty stipulations, more than three-fourths of the male adult Indians having signed the same. Furthermore, as appears by the report of the Commissioner of Indian Affairs, a treaty containing substantially the provisions of this bill except that it only provided to pay the Indians \$2.75 per acre for their land, was submitted to the Rosebud Indians by Inspector McLaughlin in August last, and forty-eight more than a majority of said Indians signed the same. It appearing, therefore, that more than three-fourths of the male adult Indians signed the original treaty, that more than a majority were willing to sell at a less price than provided in this bill, and the fact that the Department recommends the passage of the measure, provided the Indians can be insured of a lump sum equal to \$1,040,000, the amount mentioned in the original treaty, and the committee having fixed a price that it is believed will more than insure this amount, it is thought wise and no hardship or even injustice to the Indians to have such a measure passed, and for that reason recommend the passage of the bill.

Upon the general question as to the policy of legislating for the Indians without consulting them or entering into any treaty whatever, attention is called to the report of the Commissioner of Indian Affairs, herewith submitted, and also to the testimony of the Commissioner before the committee, upon this point, as follows:

"If you depend upon the consent of the Indians as to the disposition of the lands where they have the fee to the land, you will have difficulty in getting it, and I think the decision in the *Lone Wolf* case, that Congress can do as it sees fit with the property of the Indians, will enable you to dispose of that land without the

consent of the Indians. If you wait for their consent in these matters it will be fifty years before you can do away with the reservations. You know, and Mr. Curtis especially knows, that the most intelligent tribe in the Indian Territory are the Cherokees; they are practically white, yet they were the last to consent to the distribution of their land, and did not so until the Curtis Act compelled them to consent to it, so that no matter to what stage of intelligence or growth or civilization an Indian tribe has attained it does not necessarily follow that you will get their consent.

"Take the case of the New York Indians, which you had before you in the last Congress, and which, I assume, will come up again this year. If you depend upon the consent of those Indians to separate their lands and distribute their funds, it will be fifty years before you get it. The public policy, the policy of the Government, is against segregating and setting aside large tracts of land for the benefit of the Indians, which simply becomes festers on the surface of the country in which they are located. I believe in dealing fairly with the Indian. Give him what is absolutely his. Give him 80 or 180 acres, or if it is necessary, give him two or three hundred acres of grazing land, on which he can make a living under the conditions existing in the State where it is located. If the Indian has the right to the land, then I think you should set aside what funds are derived from it and pay them out gradually to him and not in a lump sum. I know I am running counter to the traditions of the office of my superiors in this, but hereafter, when asked to make any report on these bills, I shall report in favor of Congress taking the property of the Indians without their consent.

"Mr. Burke. Would you make that statement general, or would you except reservations where there may be

in existence treaty relations that provide directly to the contrary? For instance, do you know there is in existence among the Sioux—I think in the treaty of 1868—a provision that the Indians will not be deprived of their lands without the consent of three-fourths, and that provision was reenacted, I think, in the treaty of 1889.

"Commissioner Jones. I will go to the extreme. I do not think I would ask the consent of the Indians in that case. Supposing you were the guardian or ward of a child 8 or 10 years of age, would you ask the consent of the child as to the investment of its funds? No; you would not, and I do not think it a good business principle in this case."

The price of the land, as provided in the bill, will not only insure the amount for which the Indians agreed to sell, but in the opinion of the committee is a fair and just price for the same, and in view of all the circumstances the passage of the bill is recommended.

Letters from the Secretary of the Interior, transmitting the treaty to the Senate, together with the letter from the Commissioner of Indian Affairs in relation to same, dated November 23, 1901, are herewith appended.

Department of the Interior.
Washington, January 12, 1904.

Sir: I have the honor to acknowledge the receipt of your communication of the 15th ultimo, inclosing for report the bill (Hr. 50) introduced by Mr. Burke, of South Dakota, "to ratify and amend an agreement with the Sioux tribe of Indians of the Rosebud Reservation,

in South Dakota, and making appropriation and provision to carry the same into effect."

In reply, I transmit herewith a copy of a report on the matter by the Commissioner of Indian Affairs, dated the 9th instant, in which, after discussing the provisions of the bill, and referring at some length to the unsuccessful efforts of the Department to secure a new agreement with the Indians for the cession of the lands in question along the lines proposed in S. 7390 of the last session of the Fifty-seventh Congress (which bill failed of passage), the Commissioner suggests that the bill H.R. 50 should be so amended as to insure to the Indians an average price of not less than \$2.50 per acre for the lands ceded by them; also that the provision in the bill authorizing the Secretary of the Interior, in his discretion, to grant extensions of time to settlers within which to make their payments (line 25, p. 7, and lines 1, 2, and 3, p. 8) should be entirely eliminated.

I have the honor to especially invite the attention of the committee to the remarks of the Commissioner on these points, which are fully concurred in by me.

No objection will be offered to H.R. 50 if modified and amended as suggested.

Very respectfully,

E. A. Hitchcock, *Secretary*.

The Chairman of the Committee on Indian Affairs.
House of Representatives.

Department of the Interior,
Office of Indian Affairs,
Washington, January 9, 1904.

Sir: The office has the honor to acknowledge receipt, by reference from the Acting Secretary of the Interior,

for report, of a letter dated December 15, 1903, from Hon. J. S. Sherman, chairman of the House Committee on Indian Affairs, with which he transmits a copy of H.R. 50, Fifty-eighth Congress, first session, providing for the ratification and amendment of the agreement with the Rosebud Indians in South Dakota, upon which he states he would like to have a report from the Department.

Reporting upon this bill, the Office deems it proper at the very outset to invite attention to the fact that the same proposes to open the surplus lands of the Rosebud Indians, situated in Gregory County, for public settlement and dispose of the same without the consent of the Indians to the terms thereof.

The bill has been compared with and found to be similar to S. 7390, Fifty-seventh Congress, second session, upon which the Office made a report under date of February 25, 1903, with the exception that the fifth section of said S. 7390, which provided that the agreement is amended should take effect only upon acceptance thereof and consent thereto by the Rosebud Indians, is omitted in said H.R. 50.

The essential features of the bill now in hand, aside from the omission of the provision that the same shall be effective only when accepted by the Indians, are as follows:

(1) Instead of paying the Indians a lump sum of \$1,040,000 for the surplus Gregory County lands, as provided in the agreement of September 14, 1901, it is proposed to dispose of the lands to settlers under the provisions of the homestead and town-site laws, excepting sections 16 and 36, or the equivalent thereof, at not less than \$2.50 per acre, the proceeds arising from such sale to be paid to the Indians in the manner provided for in said agreement.

(2) Sections 16 and 36 in each township, or their equivalent, are to be reserved for the use of the common schools of South Dakota and are to be paid for by the United States at the rate of \$2.50 per acre. The selections are to be made prior to the opening of the lands to settlement.

(3) Of the proceeds arising from the sale of the lands ceded, the sum of \$250,000 is to be expended in the purchase of stock cattle, which are to be issued to the Indians as equally as possible, it being provided, however, that not more than half the money received in any one year shall be thus expended. The other half is to be paid to the Indians per capita in cash. The payments are to be paid in the month of December of each year until all the lands are fully paid for and the funds disbursed among the Indians.

(4) The homestead settlers entering said lands are to pay for the same at the rate of \$2.50 per acre, of which money 50 cents per acre is to be paid at the time of entry and 50 cents per year during the next four years until the total amount is paid up. If the entryman fails to make any of the payments within the right time required, it is provided that all of his rights shall cease and his entry shall be held for cancellation, unless the Secretary of the Interior excuses the failure to pay after good cause is shown.

(5) All the lands remaining undisposed of to homestead settlers at the expiration of four years are to be sold at public auction, to the highest bidder for cash, under regulations to be prescribed by the Secretary of the Interior, in tracts not exceeding 160 acres to any one person, at not less than \$2.50 per acre.

(6) The last section of the bill stipulates that the United States shall act only as trustee for said Indians in disposing of the lands and in expending and paying

over the proceeds derived from their sale, and that the Government shall not be bound in any manner to purchase any of said lands, excepting sections 16 and 36, or to dispose of the same otherwise than as proposed in the bill, or to guarantee to find purchasers for the same, or for any portion thereof.

The propositions of the bill as above set forth, it will be noted, differ most materially from the provisions contained in the agreement of September 14, 1901, which stipulated for the purchase of the land ceded by the United States for the lump consideration of \$1,040,000. Senate bill No. 7390, Fifty-seventh Congress, second session, already referred to, was similar to the bill now in hand with the exception, as indicated above, that section 5, which provided for the acceptance and consent of the Indians to the terms proposed, is now eliminated and stricken out. Under date of February 25, 1903, the Office reported upon said S. 7390, and stated that in view of the fact that the same contained provision for the consent of the Indians to the bill before it should become binding, the Office would interpose no objection thereto.

The bill was not, however, passed by Congress, and during the past summer, at the request of the entire South Dakota delegation in Congress, and effort was made to conclude a new agreement with the Indians of the Rosebud Reservation for the cession of the lands in question along the lines contained in said S. 7390. Draft of instructions for the guidance of the United States Indian inspector, James McLaughlin, in the conduct of negotiations for such agreement were prepared by this office, dated June 30, 1903, and approved by the Department July 3, 1903.

Under date of August 31, 1903, Inspector McLaughlin reported his failure to conclude an agree-

ment with the Indians on the terms proposed. His negotiations with the Indians and his journey over the reservation for the purpose of securing signatures from the Indians cover a period of about six weeks, as shown by his report. He stated that the Indians were unanimous in refusing to assent to the bill as presented to them, the main opposition, as shown by the proceedings of the several councils, being based upon the statements that the lands in question are worth more per acre than the amount proposed to be paid to them therefor. After making some material modifications in the terms of the agreement, which would result in the procurement for the Indians of a larger price for their lands, the inspector succeeded in getting a majority of the signatures of the 125 Indians present at the council. The additional signatures were obtained by visits to the several camps until a total of 737 signatures had been procured. While this was 48 more than half the male adult Indians of the reservation, it still lacked 296 of the required three-fourths majority.

One of the modifications made by the inspector in the agreement as signed was that settlers on the lands entered as homesteads should pay therefor at the rate of \$2.75 per acre instead of \$2.50, as proposed in the bill. The amount which the Government was to pay, however, for sections 16 and 36 was left at \$2.50 per acre, as in the original bill. This the inspector considered to be just and equitable, for the reason that the school lands would be paid for by direct appropriations of Congress and would be immediately available upon the ratification of the agreement, whereas the homestead tracts would be paid for in six installments running for a period of five years.

Another modification made was to the effect that the lands remaining undisposed of to homestead settlers

at the expiration of four years should be disposed of at public auction in tracts not exceeding 160 acres, without restriction as to the number of tracts that might be purchased by any one bidder. This modification the inspector thought would result in the sale of some of the rougher and less desirable tracts to ranchmen as ranger, whereas they would not be bought by individual purchasers in 160-acre tracts.

A careful reading of the council proceedings, which were quite prolonged, and full transcripts of which the inspector transmitted with his report, discloses the fact that the main objection of the Indians to the proposition submitted was that the price to be received by them for their lands was inadequate and that it would not even guarantee the procurement by them of as much money as was stipulated for in the agreement of September 14, 1901, and with the additional uncertainty that the payments by the settlers might not be made at all.

When the agreement of September 14, 1901, was being concluded the Indians argued with great persistency that their lands were worth more than \$2.50 per acre, and they were almost unanimous in declaring that they were well worth \$5 per acre. Since that time several petitions have been received from the Rosebud Indians earnestly protesting against the ratification of said agreement because of the inadequacy of the compensation. Letters from outside and apparently disinterested parties were also received indicating that the lands were worth a considerably larger price than that agreed to be paid. In fact, one offer was made by parties to take all the lands covered by the cession at the rate of \$5 per acre. On this point the Office seems warranted in saying that from the best information it has been able to obtain a considerable portion of these

lands is worth perhaps two or three times the amount proposed to be charged to homestead settlers therefor, and that no doubt the entire tract taken as a whole, exclusive of the allotments, is worth considerable more than \$2.50 per acre.

The Indians can not see, as indicated in their talks and councils and as reported by Inspector McLaughlin, why they should not procure such price for the lands as settlers are willing to pay for them. The Indians in their talks have shown themselves to be not unreasonable in their demands, but simply persisted in demanding what they believed to be just and proper. In fact many of the Indians during the councils last summer indicated that if the propositions under consideration would guarantee the procurement by them of as much money as was stipulated for in the agreement of September 14, 1901, that they would not oppose the same. They felt, however, that there was no certainty that they would realize even \$2.50 per acre for the lands proposed to be ceded.

The proposition now made, as contained in said H.R. 50, evidently rests on the assumption that the consent of the Indians to the session of the lands in question on proper terms can not be procured; and that therefore the lands must be disposed of, if at all, without the consent of the Indians. There is no doubt but that such action by Congress is warranted under the decision of the Supreme Court in the case of *Lone Wolf v. Hitchcock*, handed down on January 5, 1903 (187 U.S., p. 553).

So far as the treaty relations of the Indians with the United States are concerned, the status of the Rosebud Indians is almost identically similar to that of the Kiowas, Comanches, and Apaches, whose treaty was under consideration in the *Lone Wolf* decision. Article

12 of the treaty of April 20, 1868, with the Sioux tribe of Indians (15 Stats., p. 635), contains the following provision:

"No treaty for the cession of any portion or part of the reservation herein described, which may be held in common, shall be of any validity or force as against the said Indians unless executed and signed by at least three-fourths of all the adult male Indians occupying or interested in the same," etc.

Although the Kiowa Indians had entered into treaty stipulations with the United States similar to the foregoing, the court, in the *Lone Wolf* case, held that the contention that the Indians could not be divested of their tribal property without their consent was untenable, and that the power of Congress to abrogate the provisions of an Indian treaty had always existed. The Court said:

"To uphold the claim would be to adjudge that the indirect operation of the treaty was to materially limit and qualify the controlling authority of Congress in respect to the care and protection of the Indians, and to deprive Congress, in a possible emergency, when the necessity might be urgent for a partition and disposal of the tribal lands of all power to act if the assent of the Indians could not be obtained."

It was further held that plenary authority over the tribal relations of the Indians had always been exercised by Congress, and that the power to do so has always been deemed a political one, not subject to be controlled by the Judicial Department of the Government. This power, in the opinion of the court, is a necessary one from the very nature of the relation sustained by the Government toward the Indians and its duty to protect its wards in all their relations.

Respecting the exercise of its power in dealing with the property and other interests of the Indians, the court said:

"The power exists to abrogate the provisions of an Indian treaty though presumably such power will be exercised only when circumstances arise which will not only justify the Government in disregarding the stipulations of the treaty but may demand, in the interest of the country and the Indians themselves, that it should do so. When, therefore, treaties were entered into between the United States and a tribe of Indians, it was never doubted that the power to abrogate existed in Congress, and that in a contingency such power might be availed of from considerations of governmental policy, particularly if consistent with perfect good faith toward the Indians."

Whether or not the case in hand respecting the Rosebud Indians is such as to justify Congress in disregarding the treaty stipulations, and in opening up and disposing of the lands without the consent of the Indians is one that must be left to the judgment and wisdom of Congress to determine.

As a general proposition the Office has to say that after careful and mature consideration it is of the opinion that the time has come when Congress and the Indian Department are warranted in administering the tribal interests of the Indians in the United States, including the matter of disposing of such of their lands as they do not need and do not use, without consulting the Indians affected in reference thereto.

It must be assumed, of course, in the adoption of any such policy that those charged with the duty of administering the affairs of the Indians will act in every instance in perfect good faith and will see that the rights and interests of the Indians are fully preserved

and enforced. If, therefore, the bill in hand is to be enacted into law, it is respectfully submitted that the same should be so amended as to insure the procurement to the Indians of an average price of at least \$2.50 per acre for all the lands in question.

The Office is convinced not only that the lands in question are well worth the price indicated as a whole, but that the bill as it now stands will not secure for the Indians the price named. Necessarily a considerable portion of the lands will not be disposed of under any conditions at \$2.50 per acre. In order, therefore, to procure this price for the whole, the better lands must be sold for more than the price fixed in the bill.

Another feature of the bill which the Office is positively of the opinion should be changed is that contained in line 25, page 7, authorizing the Secretary of the Interior, in his discretion, to grant an extension of time to the settler for good cause within which to make his payments. This provision, or any provision authorizing the extension of time to the settler, should be entirely eliminated and omitted, and the Office so recommends.

From ample experience gained in similar provisions in the past the Office feels justified in stating that if the privilege of deferring payments is extended to settlers for any cause, that requests for such extension will be made and multiplied by them until it will become next to impossible to secure payment at all. If the plan of disposing of the Indian lands now proposed is to be adopted, it is respectfully submitted that good faith toward the Indians requires that the payments of the settler shall be absolutely and promptly made, and that there shall be no default whatever. If this be not insisted upon at all times and in every case by Congress and the Indian Department, then there can be no

assurance that the Indians will receive for their lands the sum intended to be procured for them and the amount that will be necessary in order to bring them adequate compensation for their lands.

With the modifications and amendments to the bill as above recommended, the Office is of the opinion that the interests of the Indians will be fully conserved and that reasonable compensation will be secured for them for their lands. If so amended, therefore, the Office will interpose no objection to its enactment into law.

The letter of Mr. Sherman and the accompanying bill are herewith returned and a copy of Office report is enclosed.

Very respectfully,

W. A. Jones, *Commissioner.*

The Secretary of the Interior.

Department of the Interior,
Washington, December 6, 1901.

Sir: I have the honor to transmit herewith a copy of a report of the Commissioner of Indian Affairs, dated the 23d ultimo, and accompanying copy of an agreement, dated September 14, 1901, between United States Indian Inspector James McLaughlin and the Indians of the Rosebud Reservation, S. Dak., providing for the cession to the United States of the unallotted portion of their lands embraced in Gregory County, S. Dak., with the draft of a bill prepared by the Commissioner of Indian Affairs and the Commissioner of the General Land Office ratifying the agreement, and accompanying papers.

This agreement has been carefully considered by the Commissioner of Indian Affairs, and as it seems fair and

reasonable, and the terms the best that could be obtained, I have the honor to recommend that it receive favorable action by the Congress.

Very respectfully,

E.A. HITCHCOCK
Secretary.

The President pro tempore United States Senate.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,

Washington, November 23, 1901.

Sir: The Office has the honor to acknowledge the receipt of a letter, dated October 11, 1901 from the Acting Secretary of the Interior, transmitting a report by United States Indian Inspector James McLaughlin, dated October 5, 1901, with which he inclosed an agreement, dated September 14, 1901, with the Indians of the Rosebud Reservation, in South Dakota, providing for the cession of the unallotted portion of their lands embraced in Gregory County. In his said letter the Acting Secretary directed that if the Office, after consideration, finds no objection to the approval of said agreement, proper report be prepared for presentation to Congress with a view to the ratification of the agreement.

The question of securing the cession of the lands referred to was first suggested during the first session of the Fifty-sixth Congress, when bills providing for negotiations to that end were introduced. Aside from the fact that the lands in question, which are not being used by the Indians, are very desirable for agricultural purposes, the main reason put forward for having the

lands opened up was that at the present time the larger portion of Gregory County was embraced in the Indian reserve, so that it was difficult for the remainder of the county to maintain the county organization.

The Office has also had a great deal of correspondence with the people at large during the past two years in reference to the opening of said lands.

No Congressional authority for conducting negotiations, however, was granted until, by a provision contained in the last Indian appropriation act, approved March 3, 1901, the Secretary of the Interior was authorized, in his discretion, to negotiate through a United States Indian inspector with any Indians for the cession of portions of their respective reserves. Accordingly, under date of March 19, 1901, a draft of instructions was prepared by this Office for the guidance of the United States Indian inspector conducting negotiations with the Rosebud Indians for the lands referred to. Said instructions were approved by the Department on March 21, 1901, and Inspector McLaughlin was detailed for the duty of conducting negotiations.

In his report, dated October 5, 1901, the inspector states that he arrived at the Rosebud Agency on April 2, 1901, for the purpose of entering upon negotiations with the Indians, and that upon his arrival it was ascertained that smallpox was prevalent on the reservation, wherefore he deemed it inadvisable to assemble the Indians in general council. He states, however, that he made a trip to the Ponca Creek district, which is in Gregory County, about 100 miles east of the agency, for the purpose of conferring with the Indians there who would be the most affected by the cession, and for the purpose of traveling over that portion of the reserve

and securing a knowledge of the lands whose cession it was proposed to secure.

Negotiations having been postponed at that time, with the approval of the Department, the inspector states that he proceeded to carry out orders elsewhere, and returned to the Rosebud Agency on August 28 last and at once entered upon negotiations which, though somewhat protracted and at times discouraging, he says have been satisfactorily concluded.

Article 1 of the agreement concluded by the inspector with said Indians provides that in consideration of the sum thereafter named the Indians cede to the United States all that portion of their reservation not allotted situated and lying east of the tenth guide meridian. Said guide meridian forms the township line between townships 73 and 74 west, and is also the west boundary line of Gregory County, so that the lands ceded embrace all of the Indian reservation not allotted situated in said county.

Article 2 stipulates that in consideration of the cession agreed to by article 1 of the agreement the United States will expend for and pay to the Rosebud Indians the sum of \$1,040,000.

Article 3 provides that \$250,000 shall be expended in the purchase of stock cattle of native range or graded Texas 2-year-old heifers and graded Durham or Hereford 2-year-old bulls for issue to said Indians, the same to be distributed as equally as possible among the men, women, and children as soon as practicable after ratification of the agreement.

This article further provides that the balance of the consideration, \$790,000, shall be paid to the Indians per capita in cash in five annual installments of \$158,000 each, the first of such cash payments to be made within four months after the ratification of the agreement.

Article 4 provides that all persons of the reservation who have received allotments and are now recognized as members of the tribe, belonging on the reservation, including mixed bloods, whether their white blood comes from the paternal or maternal side, and the children born to them, shall enjoy the undisturbed and peaceable possession of their allotted lands, and shall be entitled to all the rights and privileges enjoyed by full-blood Indians. This article further provides that white men theretofore lawfully intermarried into the tribe and now living with their families upon the reserve shall have the right of residence thereon not inconsistent with existent statutes.

Article 5 provides that nothing in the agreement shall be construed to deprive the Indians of any benefits to which they are entitled under existing treaties or agreements not inconsistent with the provisions of this agreement.

Article 6 stipulates that the agreement shall not take effect and be in force until the same is accepted and ratified by the Congress of the United States.

The agreement is dated September 14, 1901, and contains the signatures of James McLaughlin, United States Indian inspector, and of 1,031 male adult Indians of the reservation. A certificate dated October 4, 1901, by William Bordeaux, official interpreter, and William F. Schmidt, special interpreter, is appended to the agreement to the effect that the provisions thereof were fully explained by them to the Indians in open council, that it was fully understood by them before signing, and that the signatures, though the names are similar in some cases, represent different individuals in each instance, as indicated by their respective ages.

Another certificate is attached to the agreement, dated October 4, 1901, by Frank Mullen, agency clerk,

and by C. H. Bennett, John Sullivan, Frank Robinson, Frank Sypal, Isaac Bettelyoun, and James A. McCorkle, farmers of the several districts of the reservation, and Louis Bordeaux, ex-farmer of the agency district, to the effect that they witnessed the signatures of United States Indian Inspector McLaughlin and of the 1,031 Indians of the Rosebud Agency to the agreement.

A certificate dated October 4, by United States Indian Agent Charles E. McChesney, is also attached, stating that the total number of male adult Indians over 18 years of age belonging on the reservation is 1,359, of whom 1,031 have signed the agreement, being 12 more than three-fourths of the male adult population of the reservation.

Respecting the terms of the cession, Inspector McLaughlin states in his report that he was greatly handicapped in the beginning by the fact that most of the Indians who favored a cession at all held the lands at an enormous price—from \$7 to \$15 per acre; that only a very few expressed their willingness to accept as low as \$5 per acre, and this in cash and all in one payment; that upon his arrival all the white men connected with the agency, as well as those of the surrounding country with whom he talked, held the lands in question as worth \$5 per acre; that it appeared that adjacent lands in Gregory County and in Hoyt County, Nebr., were selling at from \$5 to \$10 per acre; that a syndicate of cattlemen in Sioux City, Iowa, expressed its willingness to pay \$5 per acre for the entire tract, and that these current rumors and fictitious values placed upon the lands which were circulated among the Indians exercised them very much and had to be overcome by reasoning, which required time and a great amount of patience.

Having been unable to get the Indians to fix a price upon the lands in his first councils with them, the inspector states that in the council held September 12 he made them a flat offer of \$2.50 per acre for the tract, stating that this was double the minimum price of Government lands and full value for their unallotted lands in Gregory County; that whilst he regarded the land worth that amount, it was all that it was worth, and that his offer would not be increased, whereupon a number of the older men withdrew from the council; that, however, he succeeded in having a majority of those assembled remain until another council had been arranged for September 14, on which latter date an agreement was reached.

The inspector refers to the minutes of the council proceedings transmitted with his report as showing the numerous questions raised by the Indians and his answers to their contentions; also, as showing that he finally convinced a number of the leading men of the wisdom of cooperating with him in formulating an agreement.

The inspector states that the land in Gregory County is without doubt the best and most desirable portion of the Rosebud Reservation, and that although the allotments embrace much of the choicest land, yet a great deal of good land remains unallotted. The whole tract, he says, is excellent grazing land, and the greater portion is also good agricultural land, upon which excellent crops can be raised when there is sufficient rainfall during the growing season. He says he regards the compensation stipulated in the agreement as very reasonable and at the same time a fair and just price for the lands.

According to the inspector's report, the area of the portion of the Rosebud Reservation embraced in

Gregory County is 521,050.24 acres, of which 104,909 acres have been allotted to 452 Indians, leaving 416,141.24 acres unallotted, which was stated in the agreement as approximating 416,000 acres, for a definite lump sum, at \$2.50 per acre, of \$1,040,000.

The inspector adds that the cession covers 160 acres reserved for the Ponca Creek issue station, 40 acres for the Ponca Creek day school, 78.76 acres for the Catholic Mission, and two tracts of 80 and 40 acres, respectively, for the Congregational Mission—a total of 389.47 acres thus being reserved.

Respecting the disposition to be made of the proceeds arising from the cession, the inspector states that the stock cattle provided for by article 3 will be of great benefit to the Indians, who have such magnificent stock ranges upon their reservation, and that the cash payment for five years will aid the Indians materially in providing for their family needs during that time, after which the matured cattle, the increase from the stock issued to them, will be marketable and will, with proper care, give them an annual revenue thereafter.

The inspector states that he was very desirous of having the agreement provide for the construction of dams and reservoirs on arid portions of the reservation, and also for the purchase of lumber for the construction of houses, and that both he and Agent McChesney endeavored by sound reasoning to have the Indians accept such provisions, but to no purpose, they maintaining that those in need of dams could construct the same themselves, and those requiring lumber could purchase it with the money they received as their per capita payments.

They insisted that if lumber were provided for issue to the Indians an equal per capita distribution of it could not be made. The Indians insisted for a long time

upon having the entire \$790,000 paid to them in cash in one payment; but the inspector says he finally succeeded in getting their consent to its payment in five annual installments, which he says will approximate about \$30 per capita annually for five years.

The inspector transmits with his report a map, prepared by Special Allotting Agent W. A. Winder, of the portion of the reservation proposed to be ceded, which shows the several Indian allotments therein, with the names of the allottees, and also the unallotted portions; also a package of correspondence had with the State authorities of South Dakota relative to the boundaries of Gregory County, and the description of the eastern portion of the reservation.

In conclusion, the inspector states that he regards the compensation and manner of payment provided in the agreement as just and fair, both to the Indians and to the United States; that the manner of payment was the best, both for the Indians and for the Government, that the Indians would accept; that the stock cattle and the five annual cash payments will be of great benefit to the Indians in giving them a good start toward their self-support. He heartily recommends the approval and ratification of the agreement.

The agreement appears to be properly executed and in form for acceptance and ratification by Congress. It is deemed proper in this connection to refer especially to the provisions of article 4, which are evidently intended to fix the status of mixed-blood Indians upon that reservation and to insure the undisturbed residence thereon of white men intermarried with the Indians. It does not appear that this provision extends to mixed bloods as a class any rights or benefits that they did not have before, unless possibly to secure rights to children born of a marriage since the enactment of the

provision contained in the Indian appropriation act of June 7, 1897 (30 Stat., p. 62), which reads as follows:

"That all children born of a marriage heretofore solemnized between a white man and Indian woman by blood and not by adoption, where said Indian woman is at this time, or was at the time of her death, recognized by the tribe, shall have the same rights and privileges to the property of the tribe to which the mother belongs, or belonged at the time of her death, by blood, as any other member of the tribe, and no prior act of Congress shall be construed as to bar such child of such right."

Respecting the residence of white men intermarried with Indian women, it may be proper to state that this right has always been extended in such cases and permitted so long as the conduct of such white men on the reservation is not detrimental to the peace and welfare of the Indians. The Office sees no serious objection to the embodiment of this article in the agreement.

The compensation agreed upon for the land ceded, amounting to about \$2.50 per acre, is, in the judgment of this Office and from the best information obtainable, fair and reasonable. Although it might have been better to have had the consent of the Indians to the disposition of a larger portion of the proceeds, under the direction of the Secretary of the Interior, for their benefit, it will be seen from the report of the inspector and the transcript of council proceedings that the Indians would not consent to the distribution of any portion of the \$790,000 otherwise than in cash.

The office has accordingly prepared a draft of a bill embodying the agreement providing for the acceptance and ratification of the agreement. Section 2 of said draft provides for the appropriation of \$408,000, the

amount necessary to carry the provisions of articles 2 and 3 of the agreement into effect.

The matter of the disposition of the land ceded is one properly for the Department and the Commissioner of the General Land Office to arrange. It is suggested that such disposition may be provided for by the addition of another section to the draft of the bill inclosed. In this connection it is suggested that the section added should provide for the disposition of the lands ceded "excepting such tracts as may be reserved by the President, not exceeding 398.67 acres in all, for subissue station, Indian day school, one Catholic mission, and two Congregational missions."

Besides the draft of the bill in duplicate, there are transmitted herewith two copies of the agreement, two copies of the council proceedings, two copies of correspondence had by Inspector McLaughlin with the state authorities of South Dakota respecting the boundaries of Gregory County, two blue prints of map, and two copies of this report, with the recommendation that one copy of each be transmitted to the Senate and House of Representative, respectively, with request for favorable action on the agreement.

The original agreement and papers accompanying the same are transmitted herewith, with the request that they be returned to the files of this Office when the same shall have served their purpose.

Very respectfully, your obedient servant,

W. A. Jones, *Commissioner.*

The Secretary of the Interior.

Mr. GAMBLE. I offer the amendments which I send to the desk.

The PRESIDENT pro tempore. The amendments will be stated.

The SECRETARY. In section 2, page 8, line 22, after the word "Spanish," it is proposed to strike out "wars" and insert "war or Philippine insurrection."

The amendment was agreed to.

The next amendment was, in section 2, page 9, line 3, after the word "lands" to insert "entered as homesteads under the provisions of this act."

The amendment was agreed to.

The next amendment was, in section 2, page 9, line 3, after the word "follows," to insert:

Upon all land entered or filed upon within three months after the same shall be opened for settlement and entry, \$4 per acre, to be paid as follows: One dollar per acre when entry is made; 75 cents per acre within two years after entry; 75 cents per acre within three years after entry; 75 cents per acre within four years after entry, and 75 cents per acre within six months after the expiration of five years after entry.

The amendment was agreed to.

The next amendment was, in section 2, page 9, line 3, before the word "upon," to insert "and."

The amendment was agreed to.

The next amendment was, in section 2, page 9, line 4, after the word "upon," to insert "after the expiration of three months and."

The amendment was agreed to.

The next amendment was, in section 2, page 9, line 23, after the word "cancellation," to insert "and the same shall be canceled."

The amendment was agreed to.

The next amendment was, in section 4, line 8 after the word "occupied," to insert "not exceeding two sections in any one township."

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendments were concurred in.

The amendments were ordered to be engrossed, and the bill to be read a third time.

The bill was read the third time, and passed.

The preamble was agreed to.

[38 Cong. Rec. 5155 (1904)]

AGREEMENT WITH THE SIOUX TRIBE OF INDIANS OF THE ROSEBUD RESERVATION.

The SPEAKER also laid before the House the bill (H.R. 10418) entitled "An act to ratify and amend an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation and provision to carry the same into effect," with Senate amendments, which were read.

Mr. BURKE. Mr. Speaker, I move that the House concur in the Senate amendments.

Mr. BAKER. Mr. Speaker—

The SPEAKER. For what purpose does the gentleman rise?

Mr. BAKER. Just to ascertain, Mr. Speaker, what is the general effect of these amendments.

The SPEAKER. Does the gentleman from South Dakota yield to the gentleman from New York?

Mr. BURKE. For a question.

Mr. BAKER. I would like to ask the gentleman to explain the general effect of these amendments.

Mr. BURKE. I would state, Mr. Speaker, that the only material change is in raising the price from \$3 an acre to \$4 an acre for a period of three months.

Mr. BAKER. And does not affect the minimum of two dollars and a half?

Mr. BURKE. Not at all.

Mr. BAKER. It raises the maximum only?

Mr. BURKE. It does not change the price at all except to raise the price for three months from \$3 to \$4.

Mr. CURTIS. And on the highest grade lands.

Mr. STEPHENS of Texas. Mr. Speaker, I would like to inquire whether this is a Senate amendment.

Mr. BURKE. This is a Senate amendment.

The question was taken and the amendments were concurred in.

[38 Cong. Rec. 5214 (1904)]

EXAMINED BY THE HOUSE

* * *

H.R. 10418. An act to ratify and amend an agreement with the Sioux tribe of the Indians of the Rosebud Reservation in South Dakota, and making appropriation and provision to carry the same into effect;

[38 Cong. Rec. 5218 (1904)]

EXAMINED BY THE SENATE

A bill (H.R. 10418) to ratify and amend an agreement with the Sioux tribe of Indians of the Rosebud Reservation in South Dakota, and making appropriation and provision to carry the same into effect;

[38 Cong. Rec. 5287 (1904)]

ENROLLED BILLS PRESENTED TO THE
PRESIDENT FOR HIS APPROVAL.

* * *

H.R. 10418. An act to ratify and amend an agreement with the Sioux tribe of Indians of the Rosebud Reservation in South Dakota, and making appropriation and provision to carry the same into effect;

[38 Cong. Rec. 5447 (1904)]

MESSAGE FROM THE PRESIDENT
OF THE UNITED STATES.

A message from the President of the United States, by Mr. Barnes, one of his secretaries, announced that the President had approved and signed bills of the following titles:

* * *

H.R. 10418. An act to ratify and amend an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation and provision to carry the same into effect;

[#15B]

(House of Representative Report to accompany
H.R. 10418)

[H.R. Rep. No. 443, 58th Cong. 2d Sess. 1-19 (1904)]

AGREEMENT WITH INDIANS OF ROSEBUD
RESERVATION, S. DAK.

January 21, 1904.—Committed to the Committee of the
Whole House on the state of the Union
and ordered to be printed.

Mr. BURKE, from the Committee on Indian
Affairs, submitted the following

REPORT.

[To accompany H.R. 10418.]

The Committee on Indian Affairs, to whom was referred the bill (H.R. 10418) ratifying and amending an agreement with the Sioux tribe of Indians of the Rosebud Reservation in South Dakota, and making an appropriation and provision to carry the same into effect, having had the same under consideration submits the following report and recommends that the bill be amended as follows:

Section 4, line 23, strike out the word "either" and insert "any;" and in line 25 strike out the word "is" and insert "are;" and as so amended that the bill do pass.

The bill is substantially the same as H.R. 50, which was considered very fully by this committee; and the present bill is said H.R. 50, as amended, following the suggestions of the Department in accordance with the report from the Department upon said H.R. 50, which report is herewith submitted and made a part hereof.

The purpose of this bill is to ratify and amend an agreement made with the Rosebud Indians in South Dakota by Inspector James McLaughlin, dated September 14, 1901, providing for the cession to the United States of the unallotted portion of their lands in Gregory County, S. Dak., and opening the same to settlement and entry under the homestead and town-site laws.

The area of the reservation embraced in Gregory County proposed to be ceded under this agreement is 416,141.24 acres. There are 452 Indians holding allotments in the county aggregating 104,999 acres.

The agreement, as made with the Indians, provided that the United States should pay for the land at the rate of \$2.50 per acre, and from the proceeds \$250,000 was to be expended in the purchase of stock cattle for the benefit of the Indians, and the balance was to be paid per capita in cash in five annual installments. A bill for the ratification of this treaty and opening the land to settlement was transmitted by the Secretary of the Interior to Congress in the first session of the Fifty-seventh Congress. This bill provided simply for a ratification of the treaty and that the lands were to be disposed of under the provisions of the homestead law at \$2.50 per acre.

The bill was reported by this committee and was also favorably reported by the Committee on Indian Affairs in the Senate and passed the Senate. It appearing that the House was opposed to the passage of the same a

new bill was presented late in the second session of the Fifty-seventh Congress, substantially the same as the present bill now under consideration, which was favorably reported by this committee, but too late in the session to have consideration in the House.

Both of these bills present a new idea in acquiring Indian lands, and if this bill should be enacted into law it will establish a new policy and be a departure from the policy that has long since prevailed in acquiring Indian lands, as heretofore it has been the practice and policy of the Government to purchase lands from the Indians and pay them therefor and then open the same to entry and settlement, and if not immediately, ultimately, under the provisions of what is known as the free-homestead act.

This bill provides that the lands shall be disposed of under the homestead laws by the settler paying therefor and the proceeds paid to the Indians, and it is expressly provided by section 6 of this bill that the United States shall in no manner be bound to purchase any portion of the land except the school sections, or to dispose of the same except as provided, or to guarantee to find purchasers for said lands, it expressly stating that the intention of the act is that the United States shall act as trustee for the Indians in disposing of the lands and pay over the proceeds from the sale thereof only as the same are received.

The provision that \$250,000 of the amount received shall be expended for purchase of stock cattle is in accordance with the original treaty and is considered a wise provision, as it will be better for the Indians than to pay them entirely in cash, and thus enable them to better become self-supporting.

The bill further provides that not more than \$150,000 in cash shall be paid to the Indians in any

one year, which is also substantially the same as the treaty provides. Section 4 of the bill provides that sections 16 and 36, or the equivalent of two sections in every township, shall be ceded to the State of South Dakota for school purposes and paid for by the United States at \$2.50 per acre, and section 5 provides for an appropriation of \$90,000 for this purpose. This is in conformity with the guaranty given to the State of South Dakota by Congress in the enabling act, which provides that in any reservations opened to settlement subsequent to the admission of the State into the Union sections 16 and 36 would be reserved and ceded to the State for school purposes.

The provision of the bill for payment for the land by settlers in installments is deemed a wise one, as it will make it easy for the settler to pay for the land and will also provide a fund to pay the Indians an annual per capita cash payment.

The price of the land is fixed by the bill at \$3 per acre for all that is entered during the first six months after the same shall be opened to settlement and entry, and the price thereafter to be \$2.50 per acre, with a provision that at the expiration of four years from the taking effect of this act all lands remaining undisposed of shall be sold and disposed of for cash, under rules and regulations to be prescribed by the Secretary of the Interior.

There is no question but what the Indians have no use for the land that is proposed to be ceded by this bill; that the tract is only a very small portion of the Rosebud Reservation, and is really only a corner of the reservation, which will be left compact and in a square tract and a reservation about equal in size to the Pine Ridge Reservation, in South Dakota.

That in disposing of it the said Rosebud Indians will receive a per capita payment of \$30.50 each year for a period of five years, aggregating \$152.50 to each man, woman, and child, and it is thought that this payment and the matured increase that will be marketable from the stock cattle that will be given to the Indians under the terms of this bill will put them in a condition much more self-supporting than they are at present and relieve the Government from the responsibility and expense of caring for them.

Inspector McLaughlin, who negotiated the treaty with these Indians, in one of the councils said:

The census rolls show 4,917 persons belonging to this agency, which would give an annual per capita allowance of \$30.50; that is, \$30.50 once a year to each man, woman, and child for a period of five years, aggregating \$152.50 that each man, woman, and child would receive in the five years.

At the expiration of five years, when this per capita payment would end, the matured increase derived from your stock cattle would then be marketable and continue to furnish a large number of beef cattle annually thereafter, which would place you upon an independent footing, and with proper care of your cattle would insure you a regular annual income. * * * Then the stock cattle, which, if properly cared for, will bring about a great deal of prosperity among you people. And in the third place, the cash payment for five years, which would enable you to take care of your families without any suffering until you begin to receive returns from the marketable cattle, the increase of the cattle that will be issued to you.

The passage of this bill will open for settlement 416,000 acres of land, which will be settled upon, cultivated, and improved, and turned into actual homes.

This will enhance very materially the value of the 452 Indian allotments which are within the area proposed to be ceded, and it will also bring the Indians into contact with their white brothers, and give them the benefit of learning how to farm and raise stock from actual observation, and it will tend to make them more self-supporting, and be a great improvement upon their present condition, many of them being dependent upon the bounty of the Government, and the sooner Indian reservations are broken up and the Indians required to take their allotments and their surplus lands opened to settlement, the better it will be for the advancement and higher civilization of the Indian.

The principal question that the committee has had to determine in relation to this bill is, whether or not Congress has the right, and whether it should legislate to dispose of Indian lands without the consent of the Indians, and whether it would be proper to pass this bill without providing for submitting it to the Indians for their ratification and approval, in accordance with existing treaty stipulations. As to the power of Congress to so legislate there can be no question. That Congress has heretofore so legislated is established by the passage of a bill ratifying and amending a treaty with the Kiowa, Comanche, and Apache tribes of Indians in Oklahoma; the bill ratifying and amending said treaty was reported from this committee in the first session, Fifty-sixth Congress (see H.R. 342, 56th Cong., 1st sess.), and the principal objection urged against the ratification of the treaty in that case was, that it was not signed by three-fourths of the adult male Indians of the tribe, as provided by existing treaty stipulations.

The bill, however, was enacted into law, and subsequently the validity of the law and the right of Congress to legislate without the consent of the Indians

was decided by the Supreme Court of the United States in the case of *Lone Wolf v. Hitchcock*, January 5, 1903 (187 U.S., p. 553), and in this connection attention is called to the report upon H.R. 50, made by the Commissioner of Indian Affairs, under date of January 9, 1904, which report, with a letter of the Secretary of the Interior, is herewith submitted, and the full decision in said case is also herewith appended.

While the committee recognizes the right of Congress to legislate without consent of the Indians, it is not prepared to say that it should do so in all cases, and only where after mature consideration it appears that the Indians will be benefited thereby, and that the circumstances justify such legislation.

In this instance there is a treaty executed strictly as provided by former treaty stipulations, more than three-fourths of the male adult Indians having signed the same. Furthermore, as appears by the report of the Commissioners of Indian Affairs, a treaty containing substantially the provisions of this bill, except that it only provided to pay the Indians \$2.75 per acre for their land, was submitted to the Rosebud Indians by Inspector McLaughlin in August last, and forty-eight more than a majority of said Indians signed the same. It appearing, therefore, that more than three-fourths of the male adult Indians signed the original treaty, that more than a majority were willing to sell at a less price than provided in this bill, and the fact that the Department recommends the passage of the measure, provided the Indians can be insured of a lump sum equal to \$1,040,000, the amount mentioned in the original treaty, and the committee having fixed a price that it is believed will more than insure this amount it is thought wise and no hardship or even injustice to the Indians to have such a measure passed, and for that reason recommend the passage of the bill.

Upon the general question as to the policy of legislating for the Indians without consulting them or entering into any treaty whatever, attention is called to the report of the Commissioner of Indian Affairs, herewith submitted, and also to the testimony of the Commissioner before the committee, upon this point, as follows:

If you depend upon the consent of the Indians as to the disposition of the lands where they have the fee to the land, you will have difficulty in getting it, and I think the decision in the Lone Wolf case, that Congress can do as it sees fit with the property of the Indians will enable you to dispose of that land without the consent of the Indians. If you wait for their consent in these matters, it will be fifty years before you can do away with the reservations. You know, and Mr. Curtis especially knows, that the most intelligent tribe in the Indian Territory are the Cherokees; they are practically white, yet they were the last to consent to it, so that no matter to what stage of intelligence or growth or civilization an Indian tribe has attained, it does not necessarily follow that you will get their consent.

Take the case of the New York Indians which you had before you in the last Congress, and which, I assume, will come up again this year. If you depend upon the consent of those Indians to separate their lands and distribute their funds it will be fifty years before you get it. The public policy, the policy of the Government, is against segregating and setting aside spots of land for the benefit of the Indians, which simply become festers on the surface of the country in which they are located. I believe in dealing fairly with the Indian. Give him what is absolutely his. Give him 80 or 160 acres, or if it is necessary, give him two

or three hundred acres of grazing land, on which he can make a living under the conditions existing in the State where it is located. If the Indian has the right to the land, then, I think, you should set aside what funds are derived from it and pay them out gradually to him and not in a lump sum. I know I am running counter to the traditions of the office of my superiors in this, but hereafter, when asked to make any report on these bills, I shall report in favor of Congress taking the property of the Indians without their consent.

Mr. Burke. Would you make that statement general or would you except reservations where there may be in existence treaty relations that provide directly to the contrary? For instance, do you know there is in existence among the Sioux—I think in the treaty of 1868—a provision that the Indians will not be deprived of their lands without the consent of three-fourths, and that provision was reenacted, I think, in the treaty of 1889.

Commissioners Jones. I will go to the extreme. I do not think I would ask the consent of the Indians in that case. Supposing you were the guardian or ward of a child 8 or 10 years of age, would you ask the consent of the child as to the investment of its funds? No; you would not, and I do not think it is a good business principle in this case.

The price of the land as provided in the bill will not only insure the amount for which the Indians agreed to sell, but in the opinion of the committee is a fair and just price for the same, and in view of all the circumstances the passage of the bill is recommended.

Letters from the Secretary of the Interior, transmitting the treaty to the Senate, together with the letter from the Commissioner of Indian Affairs in relation to same, dated November 23, 1901, are herewith appended.

Department of the Interior,
Washington, January 12, 1904.

Sir: I have the honor to acknowledge the receipt of your communication of the 15th ultimo, inclosing for report the bill H.R. 50, introduced by Mr. Burke, of South Dakota, "To ratify and amend an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation and provision to carry the same into effect."

In reply, I transmit herewith a copy of a report on the matter by the Commissioner of Indian Affairs, dated the 9th instant, in which after discussing the provisions of the bill, and referring at some length to the unsuccessful efforts of the Department to secure a new agreement with the Indians for the cession of the lands in question along the lines proposed in S. 7390 of the last session of the Fifty-seventh Congress (which bill failed of passage), the Commissioner suggests that the bill (H.R. 50) should be so amended as to insure to the Indians an average price of not less than \$2.50 per acre for the lands ceded by them; also that the provision in the bill authorizing the Secretary of the Interior, in his discretion, to grant extensions of time to settlers within which to make their payments (line 25, p. 7, and lines 1, 2, and 3, p. 8) should be entirely eliminated.

I have the honor to especially invite the attention of the committee to the remarks of the Commissioner on these points, which are fully concurred in by me.

No objection will be offered to H.R. 50 if modified and amended as suggested.

Very respectfully,

E.A. Hitchcock, *Secretary*.

The Chairman of the Committee on Indian
Affairs,

House of Representatives.

Department of the Interior,
Office of Indian Affairs,
Washington, January 9, 1904.

Sir: The Office has the honor to acknowledge receipt, by reference from the Acting Secretary of the Interior, for report, of a letter dated December 15, 1903, from Hon. J.S. Sherman, chairman of the House Committee on Indian Affairs, with which he transmits a copy of H.R. 50, Fifty-eighth Congress, first session, providing for the ratification and amendment of the agreement with the Rosebud Indians in South Dakota, upon which he states he would like to have a report from the Department.

Reporting upon this bill, the Office deems it proper at the very outset to invite attention to the fact that the same proposes to open the surplus lands of the Rosebud Indians, situated in Gregory County, for public settlement and dispose of the same without the consent of the Indians to the terms thereof.

The bill has been compared with and found to be similar to S. 7390, Fifty-seventh Congress, second session, upon which the office made a report under date of February 25, 1903, with the exception that the fifth section of said S. 7390, which provided that the agreement as amended should take effect only upon acceptance thereof and consent thereto by the Rosebud Indians, is omitted in said H.R. 50.

The essential features of the bill now in hand, aside from the omission of the provision that the

same shall be effective only when accepted by the Indians, are as follows:

(1) Instead of paying the Indians a lump sum of \$1,040,000 for the surplus Gregory County lands, as provided in the agreement of September 14, 1901, it is proposed to dispose of the lands to settlers under the provisions of the homestead and town-site laws, excepting sections 16 and 36, or the equivalent thereof, at not less than \$2.50 per acre, the proceeds arising from such sale to be paid to the Indians in the manner provided for in said agreement.

(2) Sections 16 and 36 in each township, or their equivalent, are to be reserved for the use of the common schools of South Dakota and are to be paid for by the United States at the rate of \$2.50 per acre. The selections are to be made prior to the opening of the lands to settlement.

(3) Of the proceeds arising from the sale of the lands ceded, the sum of \$250,000 is to be expended in the purchase of stock cattle, which are to be issued to the Indians as equally as possible, it being provided, however, that not more than half the money received in any one year shall be thus expended. The other half is to be paid to the Indians per capita in cash. The payments are to be paid in the month of December of each year until all the lands are fully paid for and the funds disbursed among the Indians.

(4) The homestead settlers entering said lands are to pay for the same at the rate of \$2.50 per acre, of which money 50 cents per acre is to be paid at the time of entry and 50 cents per year during the next four years until the total amount is paid up. If the entryman fails to make any of the payments within the right time required, it is provided that all of his rights shall cease and his

entry shall be held for cancellation, unless the Secretary of the Interior excuses the failure to pay after good cause is shown.

(5) All the lands remaining undisposed of to homestead settlers at the expiration of four years are to be sold at public auction, to the highest bidder for cash, under regulations to be prescribed by the Secretary of the Interior, in tracts not exceeding 160 acres to any one person, at not less than \$2.50 per acre.

(6) The last section of the bill stipulates that the United States shall act only as trustee for said Indians in disposing of the lands and in expending and paying over the proceeds derived from their sale, and that the Government shall not be bound in any manner to purchase any of said lands, excepting sections 16 and 36, or to dispose of the same otherwise than as proposed in the bill, or to guarantee to find purchasers for the same, or for any portion thereof.

The propositions of the bill as above set forth, it will be noted, differ most materially from the provisions contained in the agreement of September 14, 1901, which stipulated for the purchase of the lands ceded by the United States for the lump consideration of \$1,040,000. Senate bill No. 7390, Fifty-seventh Congress, second session, already referred to, was similar to the bill now in hand with the exception, as indicated above, that section 5, which provided for the acceptance and consent of the Indians to the terms proposed, is now eliminated and stricken out. Under date of February 25, 1903, the Office reported upon said S. 7390, and stated that in view of the fact that the same contained provision for the consent of the Indians to the bill before it should become binding, the Office would interpose no objection thereto.

The bill was not, however, passed by Congress, and during the past summer, at the request of the entire South Dakota delegation in Congress, an effort was made to conclude a new agreement with the Indians of the Rosebud Reservation for the cession of the lands in question along the lines contained in said S. 7390. Draft of instructions for the guidance of the United States Indian inspector, James McLaughlin, in the conduct of negotiations for such agreement were prepared by this office, dated June 30, 1903, and approved by the Department July 3, 1903.

Under date of August 31, 1903, Inspector McLaughlin reported his failure to conclude an agreement with the Indians on the terms proposed. His negotiations with the Indians and his journey over the reservation for the purpose of securing signatures from the Indians cover a period of about six weeks, as shown by his report. He stated that the Indians were unanimous in refusing to assent to the bill as presented to them, the main opposition, as shown by the proceedings of the several councils, being based upon the statements that the lands in question are worth more per acre than the amount proposed to be paid to them therefor. After making some material modifications in the terms of the agreement, which would result in the procurement for the Indians of a larger price for their lands, the inspector succeeded in getting a majority of the signatures of the 125 Indians present at the council. The additional signatures were obtained by visits to the several camps until a total of 737 signers had been procured. While this was 48 more than half the male adult Indians of the reservation, it still lacked 296 of the required three-fourths majority.

One of the modifications made by the inspector in the agreement as signed was that settlers on the lands entered as homesteads should pay therefor at the rate of \$2.75 per acre instead of \$2.50, as proposed in the bill. The amount which the Government was to pay, however, for sections 16 and 36 was left at \$2.50 per acre, as in the original bill. This the inspector considered to be just and equitable, for the reason that the school lands would be paid for by direct appropriation of Congress and would be immediately available upon the ratification of the agreement, whereas the homestead tracts would be paid for in six installments running for a period of five years.

Another modification made was to the effect that the lands remaining undisposed of to homestead settlers at the expiration of four years should be disposed of at public auction in tracts not exceeding 160 acres, without restriction as to the number of tracts that might be purchased by any one bidder. This modification the inspector thought would result in the sale of some of the rougher and less desirable tracts to ranchmen as ranges, whereas they would not be bought by individual purchasers in 160-acre tracts.

A careful reading of the council proceedings, which were quite prolonged, and full transcripts of which the inspector transmitted with his report, discloses the fact that the main objection of the Indians to the proposition submitted was that the price to be received by them for their lands was inadequate and that it would not even guarantee the procurement by them of as much money as was stipulated for in the agreement of September 14, 1901, and with the additional uncertainty that the payments by the settlers might not be made at all.

When the agreement of September 14, 1901, was being concluded the Indians argued with great persistency that their lands were worth more than \$2.50 per acre, and they were almost unanimous in declaring that they were well worth \$5 per acre. Since that time several petitions have been received from the Rosebud Indians earnestly protesting against the ratification of said agreement because of the inadequacy of the compensation. Letters from outside and apparently disinterested parties were also received indicating that the lands were worth a considerably larger price than that agreed to be paid. In fact, one offer was made by parties to take all the lands covered by the cession at the rate of \$5 per acre. On this point the Office seems warranted in saying that from the best information it has been able to obtain a considerable portion of these lands is worth perhaps two or three times the amount proposed to be charged to homestead settlers therefor, and that no doubt the entire tract taken as a whole, exclusive of the allotments, is worth considerable more than \$2.50 per acre.

The Indians can not see, as indicated in their talks and councils and as reported by Inspector McLaughlin, why they should not procure such price for the lands as settlers are willing to pay for them. The Indians in their talks have shown themselves to be not unreasonable in their demands, but simply persisted in demanding what they believed to be just and proper. In fact, many of the Indians during the councils last summer indicated that if the propositions under consideration would guarantee the procurement by them of as much money as was stipulated for in the agreement of September 14, 1901, that they would not oppose the same. They felt, however, that there was no certainty that they would realize even \$2.50 per acre for the lands proposed to be ceded.

The proposition now made, as contained in said H.R. 50, evidently rests on the assumption that the consent of the Indians to the cession of the lands in question on proper terms can not be procured, and that therefore the lands must be disposed of, if at all, without the consent of the Indians. There is no doubt but that such action by Congress is warranted under the decision of the Supreme Court in the case of *Lone Wolf v. Hitchcock*, handed down on January 5, 1903 (187 U.S., p. 553).

So far as the treaty relations of the Indians with the United States are concerned, the status of the Rosebud Indians is almost identically similar to that of the Kiowas, Comanches, and Apaches, whose treaty was under consideration in the *Lone Wolf* decision. Article 12 of the treaty of April 20, 1868, with the Sioux tribe of Indians (15 Stats. p. 635), contains the following provision:

"No treaty for the cession of any portion or part of the reservation hereon described, which may be held in common, shall be of any validity or force as against the said Indians unless executed and signed by at least three-fourths of all the adult male Indians occupying or interested in the same," etc.

Although the Kiowa Indians had entered into treaty stipulations with the United States similar to the foregoing, the court, in the *Lone Wolf* case, held that the contention that the Indians could not be divested of their tribal property without their consent was untenable, and that the power of Congress to abrogate the provisions of an Indian treaty had always existed. The court said:

"To uphold the claim would be to adjudge that the indirect operation of the treaty was to materially limit and qualify the controlling authority of

Congress in respect to the care and protection of the Indians, and to deprive Congress, in a possible emergency, when the necessity might be urgent for a partition and disposal of the tribal lands of all power to act if the assent of the Indians could not be obtained."

It was further held that plenary authority over the tribal relations of the Indians had always been exercised by Congress, and that the power to do so has always been deemed a political one, not subject to be controlled by the Judicial Department of the Government. This power, in the opinion of the court, is a necessary one from the very nature of the relation sustained by the Government toward the Indians and its duty to protect its wards in all their relations.

Respecting the exercise of its power in dealing with the property and other interests of the Indians the court said:

"The power exists to abrogate the provisions of an Indian treaty, though presumably such power will be exercised only when circumstances arise which will not only justify the Government in disregarding the stipulations of the treaty but may demand, in the interest of the country and the Indians themselves, that it should do so. When, therefore, treaties were entered into between the United States and a tribe of Indians it was never doubted that the power might be availed of from considerations of governmental policy, particularly if consistent with perfect good faith toward the Indians."

Whether or not the case in hand respecting the Rosebud Indians is such as to justify Congress in disregarding the treaty stipulations, and in opening up and disposing of the lands without the consent of the Indians, is one that must be left to the judgment and wisdom of Congress to determine.

As a general proposition the Office has to say that after careful and mature consideration it is of the opinion that the time has come when Congress and the Indian Department are warranted in administering the tribal interests of the Indians in the United States, including the matter of disposing of such of their lands as they do not need and do not use, without consulting the Indians affected in reference thereto.

It must be assumed, of course, in the adoption of any such policy that those charged with the duty of administering the affairs of the Indians will act in every instance in perfect good faith, and will see that the rights and interests of the Indians are fully preserved and enforced. If, therefore, the bill in hand is to be enacted into law, it is respectfully submitted that the same should be so amended as to insure the procurement to the Indians of an average price of at least \$2.50 per acre for all the lands in question.

The Office is convinced not only that the lands in question are well worth the price indicated as a whole, but that the bill as it now stands will not secure for the Indians the price named. Necessarily a considerable portion of the lands will not be disposed of under any conditions at \$2.50 per acre. In order therefore to procure this price for the whole the better lands must be sold for more than the price fixed in the bill.

Another feature of the bill which the Office is positively of the opinion should be changed is that contained in line 25, page 7, authorizing the Secretary of the Interior, in his discretion, to grant an extension of time to the settler for good cause within which to make his payments. This provision, or any provision authorizing the extension of time to the settler, should be entirely eliminated and omitted, and the Office so recommends.

From ample experience gained in similar provisions in the past the Office feels justified in stating that if the privilege of deferring payments is extended to settlers for any cause that requests for such extensions will be made and multiplied by them until it will become next to impossible to secure payment at all. If the plan of disposing of the Indian lands now proposed is to be adopted, it is respectfully submitted that good faith toward the Indians requires that the payments of the settler shall be absolutely and promptly made, and that there shall be no default whatever. If this be not insisted upon at all times and in every case by Congress and the Indian Department, then there can be no assurance that the Indians will receive for their lands the sum intended to be procured for them and the amount that will be necessary in order to bring them adequate compensation for their lands.

With the modifications and amendments to the bill as above recommended, the Office is of the opinion that the interests of the Indians will be fully conserved and that reasonable compensation will be secured for them for their lands. If so amended, therefore, the Office will interpose no objection to its enactment into law.

The letter of Mr. Sherman and the accompanying bill are herewith returned, and a copy of Office report is inclosed.

Very respectfully,

W.A. Jones,
Commissioner.

The Secretary of the Interior.

Department of the Interior,
Washington, December 6, 1901.

Sir: I have the honor to transmit herewith a copy of a report of the Commissioner of Indian Affairs, dated the 23d ultimo, and accompanying copy of an agreement, dated September 14, 1901, between United States Indian Inspector James McLaughlin and the Indians of the Rosebud Reservation, S. Dak., providing for the cession to the United States of the unallotted portion of their lands embraced in Gregory County, S. Dak., with the draft of a bill prepared by the Commissioner of Indian Affairs and the Commissioner of the General Land Office ratifying the agreement, and accompanying papers.

This agreement has been carefully considered by the Commissioner of Indian Affairs, and as it seems fair and reasonable, and the terms the best that could be obtained, I have the honor to recommend that it receive favorable action by the Congress.

Very respectfully,

E. A. Hitchcock,
Secretary.

THE PRESIDENT PRO TEMPORE UNITED STATES
SENATE.

Department of the Interior,
Office of Indian Affairs,
Washington, November 23, 1901.

Sir: The Office has the honor to acknowledge the receipt of a letter, dated October 11, 1901, from the Acting Secretary of the Interior, transmitting a report by United States Indian Inspector James McLaughlin, dated October 5, 1901, with which he inclosed an agreement, dated September 14, 1901, with the Indians of the Rosebud Reser-

vation, in South Dakota, providing for the cession of the unallotted portion of their lands embraced in Gregory County. In his said letter the Acting Secretary directed that if the Office, after consideration, finds no objection to the approval of said agreement, proper report be prepared for presentation to Congress with a view to the ratification of the agreement.

The question of securing the cession of the lands referred to was first suggested during the first session of the Fifty-sixth Congress, when bills providing for negotiations to that end were introduced. Aside from the fact that the lands in question, which are not being used by the Indians, are very desirable for agricultural purposes, the main reason put forward for having the lands opened up was that at the present time the larger portion of Gregory County was embraced in the Indian reserve, so that it was difficult for the remainder of the county to maintain the county organization.

The Office has also had a great deal of correspondence with the people at large during the past two years in reference to the opening of said lands.

No Congressional authority for conducting negotiations, however, was granted until, by a provision contained in the last Indian appropriation act, approved March 3, 1901, the Secretary of the Interior was authorized, in his discretion, to negotiate through a United States Indian inspector with any Indians for the cession of portions of their respective reserves. Accordingly, under date of March 9, 1901, a draft of instructions was prepared by this Office for the guidance of the United States Indian inspector conducting negotiations with the Rosebud Indians for the lands referred to. Said instructions were approved by the

Department on March 21, 1901, and Inspector McLaughlin detailed for the duty of conducting negotiations.

In his report, dated October 5, 1901, the inspector states that he arrived at the Rosebud Agency on April 2, 1901, for the purpose of entering upon negotiations with the Indians, and that upon his arrival it was ascertained that small-pox was prevalent on the reservation, wherefore he deemed it inadvisable to assemble the Indians in general council. He states, however, that he made a trip to the Ponca Creek district, which is in Gregory County, about 100 miles east of the agency, for the purpose of conferring with the Indians there who would be the most affected by the cession, and for the purpose of traveling over that portion of the reserve and securing a knowledge of the lands whose session it was proposed to secure.

Negotiations having been postponed at that time, with the approval of the Department, the inspector states that he proceeded to carry out orders elsewhere, and returned to the Rosebud Agency on August 28 last and at once entered upon negotiations which, though somewhat protracted and at times discouraging, he says have been satisfactorily concluded.

Article 1 of the agreement concluded by the inspector with said Indians provides that in consideration of the sum thereafter named the Indians cede to the United States all that portion of their reservation not allotted situated and lying east of the tenth guide meridian. Said guide meridian forms the township line between townships 73 and 74 west, and is also the west boundary line of Gregory County, so that the lands ceded embrace all of the Indian reservation not allotted situated in said county.

Article 2 stipulates that in consideration of the cession agreed to by article 1 of the agreement the United States will expend for and pay to the Rosebud Indians the sum of \$1,040,000.

Article 3 provides that \$250,000 shall be expended in the purchase of stock cattle of native range or graded Texas 2-year-old heifers and graded Durham or Hereford 2-year-old bulls for issue to said Indians, the same to be distributed as equally as possible among the men, women, and children as soon as practicable after ratification of the agreement.

This article further provides that the balance of the consideration, \$790,000, shall be paid to the Indians per capita in cash in five annual installments of \$158,000 each, the first of such cash payments to be made within four months after the ratification of the agreement.

Article 4 provides that all persons of the reservation who have received allotments and are now recognized as members of the tribe, belonging on the reservation, including mixed-bloods, whether their white blood comes from the paternal or maternal side, and the children born to them, shall enjoy the undisturbed and peaceable possession of their allotted lands, and shall be entitled to all the rights and privileges enjoyed by full-blood Indians. This article further provides that white men theretofore lawfully intermarried into the tribe and now living with their families upon the reserve shall have the right of residence thereon not inconsistent with existing statutes.

Article 5 provides that nothing in the agreement shall be construed to deprive the Indians of any benefits to which they are entitled under existing treaties or agreements not inconsistent with the provisions of this agreement.

Article 6 stipulates that the agreement shall not take effect and be in force until the same is accepted and ratified by the Congress of the United States.

The agreement is dated, September 14, 1901, and contains the signatures of James McLaughlin, United States Indian inspector, and of 1,031 male adults Indians of the reservation. A certificate dated October 4, 1901, by William Bordeaux, official interpreter, and William F. Schmidt, special interpreter, is appended to the agreement to the effect that the provisions thereof were fully explained by them to the Indians in open council, that it was fully understood by them before signing, and that the signatures, though the names are similar in some cases, represent different individuals in each instance, as indicated by their respective ages.

Another certificate is attached to the agreement, dated October 4, 1901, by Frank Mullen, agency clerk, and by C.H. Bennett, John Sullivan, Frank Robinson, Frank Sypal, Isaac Bettelyoun, and James A. McCorkle, farmers of the several districts of the reservation, and Louis Bordeaux, ex-farmer of the agency district, to the effect that they witnessed the signatures of United States Indian Inspector McLaughlin and of the 1,031 Indians of the Rosebud Agency to the agreement.

A certificate dated October 4, by United States Indian Agent Charles E. McChesney, is also attached, stating that the total number of male adult Indians over 18 years of age belonging on the reservation is 1,359, of whom 1,031 have signed the agreement, being 12 more than three-fourths of the male adult population of the reservation.

Respecting the terms of the cession, Inspector McLaughlin states in his report that he was greatly handicapped in the beginning by the fact

that most of the Indians who favored a cession at all held the lands at an enormous price—from \$7 to \$15 per acre; that only a very few expressed their willingness to accept as low as \$5 per acre, and this in cash and all in one payment; that upon his arrival all the white men connected with the agency, as well as those of the surrounding country with whom he talked, held the lands in question as worth \$5 per acre; that it appeared that adjacent lands in Gregory County and in Hoyt County, Nebr., were selling at from \$5 to \$10 per acre; that a syndicate of cattlemen in Sioux City, Iowa, expressed its willingness to pay \$5 per acre for the entire tract, and that these current rumors and fictitious values placed upon the lands which were circulated among the Indians exercised them very much and had to be overcome by reasoning, which required time and a great amount of patience.

Having been unable to get the Indians to fix a price upon the lands in his first councils with them, the inspector states that in the council held September 12 he made them a flat offer of \$2.50 per acre for the tract, stating that this was double the minimum price of Government lands and full value for their unallotted lands in Gregory County; that whilst he regarded the land worth that amount, it was all that it was worth, and that his offer would not be increased, whereupon a number of the older men withdrew from the council; that, however, he succeeded in having a majority of those assembled remain until another council had been arranged for September 14, on which latter date an agreement was reached.

The inspector refers to the minutes of the council proceedings transmitted with his report as showing the numerous questions raised by the Indians and his answers to their contentions; also,

as showing that he finally convinced a number of the leading men of the wisdom of cooperating with him in formulating an agreement.

The inspector states that the land in Gregory County is without doubt the best and most desirable portion of the Rosebud Reservation, and that although the allotments embrace much of the choicest land, yet a great deal of good land remains unallotted. The whole tract, he says, is excellent grazing land, and the greater portion is also good agricultural land, upon which excellent crops can be raised when there is sufficient rainfall during the growing season. He says he regards the compensation stipulated in the agreement as very reasonable and at the same time a fair and just price for the lands.

According to the inspector's report, the area of the portion of the Rosebud Reservation embraced in Gregory County is 521,050.24 acres, of which 104,909 acres have been allotted to 452 Indians, leaving 416,141.24 acres unallotted, which was stated in the agreement as approximating 416,000 acres, for a definite lump sum, at \$2.50 per acre, of \$1,040,000.

The inspector adds that the cession covers 160 acres reserved for the Ponca Creek issue station, 40 acres for the Ponca Creek Day School, 78.76 acres for the Catholic Mission, and two tracts of 80 and 40 acres, respectively, for the Congregational Mission—a total of 398.67 acres thus being reserved.

Respecting the disposition to be made of the proceeds arising from the cession, the inspector states that the stock cattle provided for by article 3 will be of great benefit to the Indians, who have such magnificent stock ranges upon their reservation, and that the cash payment for five years, will aid the Indians materially in providing for their family needs during that time, after which the

matured cattle, the increase from the stock issued to them, will be marketable and will, with proper care, give them an annual revenue thereafter. The inspector states that he was very desirous of having the agreement provide for the construction of dams and reservoirs on arid portions of the reservation, and also for the purchase of lumber for the construction of houses, and that both he and Agent McChesney endeavored by sound reasoning to have the Indians accept such provisions, but to no purpose, they maintaining that those in need of dams could construct the same themselves, and those requiring lumber could purchase it with the money they received as their per capita payments.

They insisted that if lumber were provided for issue to the Indians an equal per capita distribution of it could not be made. The Indians insisted for a long time upon having the entire \$790,000 paid to them in cash in one payment in five annual installments, which he says will approximate about \$30 per capita annually for five years.

The inspector transmits with his report a map, prepared by Special Allotting Agent W.A. Winder, of the portion of the reservation proposed to be ceded, which shows the several Indian allotments therein, with the names of the allottees, and also the unallotted portions; also a package of correspondence had with the State authorities of South Dakota relative to the boundaries of Gregory County, and the description of the eastern portion of the reservation.

In conclusion, the inspector states that he regards the compensation and manner of payment provided in the agreement as just and fair, both to the Indians and to the United States; that the manner of payment was the best, both for the Indians and for the Government, that the Indians

would accept; that the stock cattle and the five annual cash payments will be of great benefit to the Indians in giving them a good start toward their self-support. He heartily recommends the approval and ratification of the agreement.

The agreement appears to be properly executed and in form for acceptance and ratification by Congress. It is deemed proper in this connection to refer especially to the provisions of article 4, which are evidently intended to fix the status of mixed-blood Indians upon that reservation, and to insure the undisturbed residence thereon of white men intermarried with the Indians. It does not appear that this provision extends to mixed bloods as a class any rights or benefits that they did not have before, unless possibly to secure rights to children born of a marriage since the enactment of the provision contained in the Indian appropriation act of June 7, 1897 (30 Stat., p. 62), which reads as follows:

"That all children born of a marriage heretofore solemnized between a white man and Indian woman by blood and not by adoption, where said Indian woman is at this time, or was at the time of her death, recognized by the tribe, shall have the same rights and privileges to the property of the tribe to which the mother belongs, or belonged at the time of her death, by blood, as any other member of the tribe, and no prior act of Congress shall be construed as to bar such child of such right."

Respecting the residence of white men intermarried with Indian women, it may be proper to state that this right has always been extended in such cases and permitted so long as the conduct of such white men on the reservation is not detrimental to the peace and welfare of the Indians.

The Office sees no serious objection to the embodiment of this article in the agreement.

The compensation agreed upon for the land ceded, amounting to about \$2.50 per acre, is, in the judgment of this Office and from the best information obtainable, fair and reasonable. Although it might have been better to have had the consent of the Indians to the disposition of a larger portion of the proceeds, under the direction of the Secretary of the Interior, for their benefit, it will be seen from the report of the inspector and the transcript of council proceedings that the Indians would not consent to the distribution of any portion of the \$790,000 otherwise than in cash.

The office has accordingly prepared a draft of a bill embodying the agreement providing for the acceptance and ratification of the agreement. Section 2 of said draft provides for the appropriation of \$408,000, the amount necessary to carry the provisions of articles 2 and 3 of the agreement into effect.

The matter of the disposition of the land ceded is one properly for the Department and the Commission of the General Land Office to arrange. It is suggested that such disposition may be provided for by the addition of another section to the draft of the bill inclosed. In this connection it is suggested that the section added should provide for the disposition of the lands ceded, "excepting such tracts as may be reserved by the President, not exceeding 398.67 acres in all, for subissue station, Indian day school, one Catholic mission, and two Congregational missions."

Besides the draft of the bill in duplicate, there are transmitted herewith two copies of the agreement, two copies of the council proceedings, two

copies of correspondence had by Inspector McLaughlin with the State authorities of South Dakota respecting the boundaries of Gregory County, two blue prints of map, and two copies of this report, with the recommendation that one copy of each be transmitted to the Senate and House of Representatives, respectively, with request for favorable action on the agreement.

The original agreement and papers accompanying the same are transmitted herewith, with the request that they be returned to the files of this Office when the same shall have served their purpose.

Very respectfully, your obedient servant,

W.A. Jones, *Commissioner.*

The Secretary of the Interior.

[Supreme Court of the United States. No. 275—October Term, 1902. Lone Wolf, principal chief of the Kiowas et. al., appellants v. Ethan A. Hitchcock, Secretary of the Interior et. al. Appeal from the court of appeals of the District of Columbia. January 5, 1903.]

In 1867 a treaty was concluded with the Kiowa and Comanche tribes of Indians, and such other friendly tribes as might be united with them, setting apart a reservation for the use of such Indians. By a separate treaty the Apache tribe of Indians was incorporated with the two former named and became entitled to share in the benefits of the reservation. (15 Stat., 581, 589.)

The first-named treaty is usually called the Medicine Lodge treaty. By the sixth article thereof it was provided that heads of families might select a tract of land within the reservation, not exceed-

ing 320 acres in extent, which should thereafter cease to be held in common, and should be for the exclusive possession of the Indian making the selection, so long as he or his family might continue to cultivate the land. The twelfth article of the treaty was as follows:

"Article 12. No treaty for the cession of any portion or part of the reservation herein described, which may be held in common, shall be of any validity or force as against the said Indians, unless executed and signed by at least three-fourths of all the adult male Indians occupying the same, and no cession by the tribe shall be understood or construed in such manner as to deprive, without his consent, any individual member of the tribe of his rights to any tract of land selected by him as provided in Article III (VI) of this treaty."

The three tribes settled under the treaties upon the described land. On October 6, 1892, 456 male adult members of the confederated tribes signed, with three commissioners representing the United States, an agreement concerning the reservation. The Indian agent, in a certificate appended to the agreement, represented that there were then 562 male adults in the three tribes. (Senate Ex. Doc. No. 27, Fifty-second Congress, second session, p. 17.) Four hundred and fifty-six male adults therefore constituted more than three-fourths of the certified number of total male adults in the three tribes. In form, the agreement was a proposed treaty, the terms of which, in substance, provided for a surrender to the United States of the rights of the tribes in the reservation, for allotments out of such lands to the Indians in severalty, the fee-simple title to be conveyed to the allottees or their heirs after the expiration of twenty-five years, and the payment or setting apart for the benefit of the tribes of \$2,000,000 as the consider-

ation for the surplus of land over and above the allotments which might be made to the Indians. It was provided that sundry named friends of the Indians (among such persons being the Indian agent and an army officer) "should each be entitled to all the benefits, in land only, conferred under this agreement, the same as if members of said tribes." Eliminating 350,000 acres of mountainous land, the quantity of surplus lands suitable for farming and grazing purposes was estimated at 2,150,000 acres. Concerning the payment to be made for these surplus lands, the Commission, in their report to the President announcing the termination of the negotiations, said (Senate Ex. Doc. No. 17, second session Fifty-second Congress):

"In this connection it is proper to add that the Commission agreed with the Indians to incorporate the following in their report, which is now done:

"The Indians upon this reservation seem to believe (but whether from an exercise of their own judgment or from the advice of others the Commission can not determine) that their surplus land is worth \$2,500,000, and Congress may be induced to give them that much of it. Therefore, in compliance with their request, we report that they desire to be heard through an attorney and a delegation to Washington upon that question, the agreement signed, however, to be effective upon ratification, no matter what Congress may do with their appeal for the extra half million dollars."

In transmitting the agreement to the Secretary of the Interior the Commissioner of Indian Affairs said:

"The price paid, while considerably in excess of that paid to the Cheyennes and Arapahoes, seems to be fair and reasonable, both to the Government and the Indians, the land being doubtless of better

quality than that in the Cheyenne and Arapahoe Reservation."

Attention was directed to the provision in the agreement in favor of the Indian agent and an army officer, and it was suggested that to permit them to avail thereof would establish a bad precedent.

Soon after the signing of the foregoing agreement it was claimed by the Indians that their assent had been obtained by fraudulent misrepresentations of its terms by the interpreters, and it was asserted that the agreement should not be held binding upon the tribes because three-fourths of the adult male members had not assented thereto, as was required by the twelfth article of the Medicine Lodge treaty.

Obviously, in consequence of the policy embodied in section 2079 of the Revised Statutes, departing from the former custom of dealing with Indian affairs by treaty and providing for legislative action on such subjects, various bills were introduced in both Houses of Congress designed to give legal effect to the agreement made by the Indians in 1892. These bills were referred to the proper committee, and before such committees the Indians presented their objections to the propriety of giving effect to the agreement. (House Doc. No. 431, Fifty-fifth Congress, second session.) In 1898 the Committee on Indian Affairs of the House of Representatives unanimously reported a bill for the execution of the agreement made with the Indians. The report of the committee recited that a favorable conclusion had been reached by the committee "after the fullest hearings from delegations of the Indian tribes and all parties at interest." (House Doc. No. 419, first session Fifty-sixth Congress, p. 5.)

The bill thus reported did not exactly conform to the agreement as signed by the Indians. It modified the agreement by changing the time for making the allotments, and it also provided that the proceeds of the surplus lands remaining after allotments to the Indians should be held to await the judicial decision of a claim asserted by the Choctaw and Chickasaw tribes of Indians to the surplus lands. This claim was based upon a treaty made in 1866, by which the two tribes ceded the reservation in question, it being contended that the lands were impressed with a trust in favor of the ceding tribes, and that whenever the reservation was abandoned so much of it as was not allotted to the confederated Indians of the Comanche, Kiowa, and Apache tribes reverted to the Choctaws and Chickasaws.

The bill just referred to passed the House of Representatives on May 16, 1898. (31st Cong. Rec., p. 4947.) When the bill reached the Senate that body, on January 25, 1899, adopted a resolution calling upon the Secretary of the Interior for information as to whether the signatures attached to the agreement comprised three-fourths of the male adults of the tribes. In response the Secretary of the Interior informed the Senate, under date of January 28, 1899, that the records of the Department "failed to show a census of these Indians for the year 1892," but that "from a roll used in making a payment to them in January and February, 1893, it appeared that there were 725 males over 18 years of age, of whom 639 were 21 years and over." The Secretary further called attention to the fact that by the agreement of 1892 a right of selection was conferred upon each member of the tribes over 18 years of age, and observed:

"If 18 years and over be held to be the legal age of those who were authorized to sign the agreement, the number of persons who actually signed was 87 less than three-fourths of the adult male membership of the tribes; and if 21 years be held to be the minimum age, then 23 less than three-fourths signed the agreement. In either event, less than three-fourths of the male adults appear to have so signed."

With this information before it the bill was favorably reported by the Committee on Indian Affairs of the Senate, but did not pass that body.

At the first session of the following Congress (the Fifty-sixth) bills were introduced in both the Senate and House of Representatives substantially like that which has just been noticed. (S. 1352; H.R. 905.)

In the meanwhile, about October, 1899, the Indians had, at a general council at which 571 male adults of the tribes purported to be present, protested against the execution of the provisions of the agreement of 1892, and adopted a memorial to Congress, praying that that body should not give effect to the agreement. This memorial was forwarded to the Secretary of the Interior by the Commissioner of Indian Affairs with lengthy comments, pointing out the fact that the Indians claimed that their signatures to the agreement had been procured by fraud and that the legal number of Indians had not signed the agreement, and that the previous bills and bills then pending contemplated modification of the agreement in important particulars without the consent of the Indians.

This communication from the Commissioner of Indian Affairs, together with the memorial of the Indians, was transmitted by the Secretary of the Interior to Congress. (Senate Doc. No. 76; House Doc. No. 333, first session Fifty-sixth Congress.)

Attention was called to the fact that although by the agreement of October 6, 1892, one-half of each allotment was contemplated to be agricultural land, there was only sufficient agricultural land in the entire reservation to average 30 acres per Indian. After setting out the charges of fraud and complaints respecting the proposed amendments designed to be made to the agreement, as above stated, particular complaint was made of the provision in the agreement of 1892 as to allotments in severalty among the Indians of lands for agricultural purposes. After reciting that the tribal lands were not adapted to such purposes, but were suitable for grazing, the memorial proceeded as follows:

"We submit that the provisions for lands to be allotted to us under this treaty are insufficient, because it is evident we can not, on account of the climate of our section, which renders the maturity of crops uncertain, become a successful farming community; that we, or whoever else occupies these lands, will have to depend upon the cattle industry for revenue and support. And we therefore pray, if we can not be granted the privilege of keeping our reservation under the treaty made with us in 1868, and known as the Medicine Lodge treaty, that authority be granted for the consideration of a new treaty that will make the allowance of land to be allotted to us sufficient for us to graze upon it enough stock cattle, the increase from which we can market for support of ourselves and families."

With the papers just referred to before it, the House Committee on Indian Affairs, in February, 1900, favorably reported a bill to give effect to the agreement of 1892.

On January 19, 1900, an act was passed by the Senate entitled "An act to ratify an agreement

made with the Indians of the Fort Hall Indian Reservation in Idaho, and making an appropriation to carry the same into effect." In February, 1900, the House Committee on Indian Affairs, having before it the memorial of the Indians transmitted by the Secretary of the Interior, and also having for consideration the Senate bill just alluded to, reported that bill back to the House favorably, with certain amendments. (House Doc. No. 419, Fifty-sixth Congress, first session.) One of such amendments consisted in adding to the bill in question, as section 6, a provision to execute the agreement made with the Kiowa, Comanche, and Apache Indians in 1892. Although the bill thus reported embodied the execution of the agreement last referred to, the title of the bill was not changed, and consequently referred only to the execution of the agreement made with the Indians of the Fort Hall Reservation, in Idaho. The provisions thus embodied in section 6 of the bill in question substantially conformed to those contained in the bill which had previously passed the House, except that the previous enactment on this subject was changed so as to do away with the necessity for making to each Indian one half of his allotment in agricultural land and the other half in grazing land. In addition a clause was inserted in the bill providing for the setting apart of a large amount of grazing land to be used in common by the Indians. The provision in question was as follows:

"That in addition to the allotment of lands to said Indians as provided for in this agreement, the Secretary of the Interior shall set aside for the use in common for said Indian tribes 480,000 acres of grazing lands, to be selected by the Secretary of the Interior, either in one or more tracts as will best subserve the interest of said Indians."

The provision of the agreement in favor of the Indian agent and army officer was also eliminated.

The bill, moreover, exempted the money consideration for the surplus lands from all claims for Indian depredations, and expressly provided that in the event the claim of the Choctaws and Chickasaws was ultimately sustained the consideration referred to should be subject to the further action of Congress. In this bill, as in previous ones, provision was made for allotments to the Indians, the opening of the surplus land for settlement, etc. The bill became a law by concurrence of the Senate in the amendments adopted by the House as just stated.

Thereafter, by acts approved on January 4, 1901 (chap. 8, 31 Stat., 727), March 3, 1901 (chap. 832, 31 Stat., 1078), and March 3, 1901 (chap. 846, 31 Stat., 1093), authority was given to extend the time for making allotments and opening of the surplus land for settlement for a period not exceeding eight months from December 6, 1900; appropriations were made for surveys in connection with allotments and setting apart of grazing lands; and authority was conferred to establish counties and county seats, town sites, etc., and proclaim the surplus lands open for settlement by white people.

On June 6, 1901, a bill was filed on the equity side of the supreme court of the District of Columbia wherein Lone Wolf (one of the appellants herein) was named as complainant, suing for himself as well as for all other members of the confederated tribes of the Kiowa, Comanche, and Apache Indians residing in the Territory of Oklahoma. The present appellees (the Secretary of the Interior, the Commissioners of Indian Affairs, and the Commissioner of the General Land Office)

were made respondents to the bill. Subsequently, by an amendment to the bill, members of the Kiowa, Comanche, and Apache tribes were joined with Lone Wolf as parties complainant.

The bill recited the establishing and occupancy of the reservation in Oklahoma by the confederated tribes of Kiowas, Comanches, and Apaches, the signing of the agreement of October 6, 1892, and the subsequent proceedings which have been detailed, culminating in the passage of the act of June 6, 1900, and the acts of Congress supplementary to said act.

In substance it was further charged in the bill that the agreement had not been signed as required by the Medicine Lodge treaty—that is, by three-fourths of the male adult members of the tribe—and that the signatures thereto had been obtained by fraudulent misrepresentations and concealment, similar to those recited in the memorial signed at the 1899 council. In addition to the grievance previously stated in the memorial, the charge was made that the interpreters falsely represented, when the said treaty was being considered by the Indians, that the treaty provided “for the sale of their surplus lands at some time in the future at the price of \$2.50 per acre,” whereas in truth and in fact, “by the terms of said treaty only \$1 an acre is allowed for said surplus lands,” which in sum, it was charged, was an amount far below the real value of said lands. It was also averred that portions of the signed agreement had been changed by Congress without submitting such changes to the Indians for their consideration.

Based upon the foregoing allegations, it was alleged that so much of said act of Congress of June 6, 1900, and so much of said acts supplementary thereto and amendatory thereof as provided for the taking effect of said agreement, the allot-

ment of certain lands mentioned therein to members of said Indian tribes, the surveying, laying out and platting town sites and locating county seats on said lands, and the ceding to the United States and the opening to settlement by white men of 2,000,000 acres of said lands, were enacted in violation of the property rights of the said Kiowa, Comanche, and Apache Indians, and if carried into effect would deprive said Indians of their lands without due process of law, and that said parts of said acts were contrary to the Constitution of the United States, and were void, and conferred no right, power, or duty upon the respondents to do or perform any of the acts or things enjoined or required by the acts of Congress in question. Allying the intention of the respondents to carry into effect the aforesaid claimed unconstitutional and void acts, and asking discovery by answers to interrogatories propounded to the respondents, the allowance of a temporary restraining order, and a final decree awarding a perpetual injunction was prayed, to restrain the Commission by the respondents of the alleged unlawful acts by them threatened to be done. General relief was also prayed.

On January 6, 1901, a rule to show cause why a temporary injunction should not be granted was issued. In response to this rule an affidavit of the Secretary of the Interior was filed, in which in substance it was averred that the complainant (Lone Wolf) and his wife and daughter had selected allotments under the act of June 6, 1900, and the same had been approved by the Secretary of the Interior, and that all other members of the tribes, excepting twelve, had also accepted and retained allotments in severalty, and that the greater part thereof had been approved before the bringing of this suit. It was also averred that the

480,000 acres of grazing land provided to be set apart, in the act of June 6, 1900, for the use by the Indians in common, had been so set apart prior to the institution of the suit, "with the approval of a council composed of chiefs and headmen of said Indians." Thereupon an affidavit verified by Lone Wolf was filed, in which, in effect, he denied that he had accepted an allotment of lands under the act of June 6, 1900, and the acts supplementary to and amendatory thereof. Thereafter, on June 17, 1901, leave was given to amend the bill, and the same was amended, as heretofore stated, by adding additional parties complainant and by providing a substituted first paragraph of the bill, in which was set forth, among other things, that the three tribes, at a general council held on June 7, 1901, had voted to institute all legal and other proceedings necessary to be taken to prevent the carrying into effect of the legislation complained of.

The supreme court of the District, on June 21, 1901, denied the application for a temporary injunction. The cause was thereafter submitted to the court on a demurrer to the bill as amended. The demurrer was sustained, and the complainants electing not to plead further, on June 26, 1901, a decree was entered in favor of the respondents. An appeal was thereupon taken to the court of appeals of the District. While this appeal was pending the President issued a proclamation, dated July 4, 1901 (32 Stat., Appendix Proclamations, 11), in which it was ordered that the surplus lands ceded by the Comanche, Kiowa, and Apache and other tribes of Indians should be opened to entry and settlement on August 6, 1901. Among other things, it was recited in the proclamation that all the conditions required by law to be performed

prior to the opening of the lands to settlement and entry had been performed. It was also therein recited that in pursuance of the act of Congress ratifying the agreement, allotments of land in severalty had been regularly made to each member of the Comanche, Kiowa, and Apache tribes of Indians; the lands occupied by religious societies or other organizations for religious or educational work among the Indians had been regularly allotted and confirmed to such societies and organizations, respectively, and the Secretary of the Interior, out of the lands ceded by the agreement, had regularly selected and set aside for the use in common for said Comanche, Kiowa, and Apache tribes of Indians 480,000 acres of grazing lands.

The court of appeals (without passing on a motion which had been made to dismiss the appeal) affirmed the decree of the court below and overruled a motion for reargument. (19 App. D.C.,—.) An appeal was allowed, and the decree of affirmance is now here for review.

Mr. Justice White, after making the foregoing statement, delivered the opinion of the court:

By the sixth article of the first of the two treaties referred to in the preceding statement, proclaimed on August 25, 1868 (15 Stat., 581), it was provided that heads of families of the tribes affected by the treaty might select within the reservation a tract of land not exceeding 320 acres in extent, which should thereafter cease to be held in common, and should be for the exclusive possession of the Indian making the selection so long as he or his family might continue to cultivate the land. The twelfth article reads as follows:

"Article 12. No treaty for the cession of any portion or part of the reservation herein described which may be held in common shall be of any

validity or force as against the said Indians unless executed and signed by at least three-fourths of all the adult male Indians occupying the same, and no cession by the tribe shall be understood or construed in such manner as to deprive, without his consent, any individual member of the tribe of his rights to any tract of land selected by him as provided in Article III (VI) of this treaty."

The appellants base their right to relief on the proposition that by the effect of the article just quoted the confederated tribes of Kiowas, Comanches, and Apaches were vested with an interest in the lands held in common within the reservation, which interest could not be divested by Congress in any other mode than that specified in the said twelfth article, and that as a result of the said stipulation the interest of the Indians in the common lands fell within the protection of the fifth amendment to the Constitution of the United States, and such interest, indirectly at least, came under the control of the judicial branch of the Government. We are unable to yield our assent to this view.

The contention in effect ignores the status of the contracting Indians and the relation of dependency they bore and continue to bear toward the Government of the United States. To uphold the claim would be to adjudge that the indirect operation of the treaty was to materially limit and qualify the controlling authority of Congress in respect to the care and protection of the Indians, and to deprive Congress, in a possible emergency when the necessity might be urgent for a partition and disposal of the tribal lands, of all power to act if the assent of the Indians could not be obtained.

Now, it is true that in decisions of this court the Indian right of occupancy of tribal lands, whether declared in a treaty or otherwise created,

has been stated to be sacred, or, as sometimes expressed, as sacred as the fee of the United States in the same lands. (*Johnson v. McIntosh* (1823), 8 Wheat., 543, 574; *Cherokee Nation v. Georgia* (1831), 5 Pet., 1, 48; *Worcester v. Georgia* (1832), 6 Pet., 515, 581; *United States v. Cook* (1873), 19 Wall., 591, 592; *Leavenworth, etc., R. R. Co. v. United States* (1875), 92 U.S., 733, 755; *Beecher v. Wetherby* (1877), 95 U.S., 525.)

But in none of these cases was there involved a controversy between Indians and the Government respecting the power of Congress to administer the property of the Indians. The questions considered in the cases referred to, which either directly or indirectly had relation to the nature of the property rights of the Indians, concerned the character and extent of such rights as respected States or individuals. In one of the cited cases it was clearly pointed out that Congress possessed a paramount power over the property of the Indians, by reason of its exercise of guardianship over their interests, and that such authority might be implied, even though opposed to the strict letter of a treaty with the Indians. Thus, in *Beecher v. Wetherby* (95 U.S., 525), discussing the claim that there had been a prior reservation of land by treaty to the use of a certain tribe of Indians, the court said (p. 525):

"But the right which the Indians held was only that of occupancy. The fee was in the United States, subject to that right, and could be transferred by them whenever they chose. The grantee, it is true, would take only the naked fee, and could not disturb the occupancy of the Indians; that occupancy could only be interfered with or determined by the United States. It is to be presumed that in this matter the United States would be governed by such considerations of

justice as would control a Christian people in their treatment of an ignorant and dependent race. Be that as it may, the propriety or justice of their action toward the Indians with respect to their lands is a question of governmental policy, and is not a matter open to discussion in a controversy between third parties, neither of whom derives title from the Indians."

Plenary authority over the tribal relations of the Indians has been exercised by Congress from the beginning, and the power has always been deemed a political one, not subject to be controlled by the judicial department of the Government. Until the year 1871 the policy was pursued of dealing with the Indian tribes by means of treaties, and, of course, a moral obligation rested upon Congress to act in good faith in performing the stipulations entered into on its behalf. But, as treaties made with foreign nations (*Chinese Exclusion Cases*, 130 U.S., 581, 600), the legislative power might pass laws in conflict with treaties made with the Indians. (*Thomas v. Gay*, 169 U.S., 264, 270; *Ward v. Race Horse*, 163 U.S., 504, 511; *Spalding v. Chandler*, 160 U.S., 394, 405; *Missouri, Kansas and Texas Ry. Co. v. Roberts*, 152 U.S., 114, 117; *The Cherokee Tobacco*, 11 Wall., 616.)

The power exists to abrogate the provisions of an Indian treaty, though presumably such power will be exercised only when circumstances arise which will not only justify the Government in disregarding the stipulations of the treaty but may demand, in the interest of the country and the Indians themselves, that it should do so. When, therefore, treaties were entered into between the United States and a tribe of Indians, it was never doubted that the power to abrogate existed in Congress, and that in a contingency such power might be availed of from considerations of govern-

mental policy, particularly if consistent with perfect good faith toward the Indians. In *United States v. Kagama* (1885), 118 U.S., 375, speaking of the Indians, the court said (p. 382):

"After an experience of a hundred years of the treaty-making system of government Congress has determined upon a new departure—to govern them by acts of Congress. This is seen in the act of March 3, 1871, embodied in section 2079 of the Revised Statutes: 'No Indian nation or tribe, within the territory of the United States, shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty; but no obligation of any treaty lawfully made and ratified with any such Indian nation or tribe prior to March 3, 1871, shall be hereby invalidated or impaired.'"

In upholding the validity of an act of Congress which conferred jurisdiction upon the courts of the United States for certain crimes committed on an Indian reservation within a State, the court said (p. 383):

"It seems to us that this is within the competency of Congress. These Indian tribes are the wards of the nation. They are communities dependent on the United States; dependent largely for their daily food; dependent for their political rights. They owe no allegiance to the States, and receive from them no protection. Because of the local ill feeling, the people of the States where they are found are often their deadliest enemies. From their very weaknesses and helplessness, so largely due to the course of dealing of the Federal Government with them and the treaties in which it has been promised, there arises the duty of protection, and with it the power. This has always been recognized by the Executive and by Congress and by this court, whenever the question has arisen.

* * * * *

"The power of the General Government over these remnants of a race once powerful, now weak and diminished in numbers, is necessary to their protection, as well as to the safety of those among whom they dwell. It must exist in that government, because it never has existed anywhere else, because the theater of its exercise is within the geographical limits of the United States, because it has never been denied, and because it alone can enforce its laws on all the tribes."

That Indians who had not been fully emancipated from the control and protection of the United States are subject, at least so far as the tribal lands were concerned, to be controlled by direct legislation of Congress is also declared in *Choctaw Nation v. United States* (119 U.S., 1, 27) and *Stephens v. Choctaw Nation* (174 U.S., 445, 483).

In view of the legislative power possessed by Congress over treaties with the Indians and Indian tribal property, we may not specially consider the contentions pressed upon our notice that the signing by the Indians of the agreement of October 6, 1892, was obtained by fraudulent misrepresentations and concealment; that the requisite three-fourths of adult male Indians had not signed, as required by the twelfth article of the treaty of 1867, and that the treaty as signed had been amended by Congress without submitting such amendments to the action of the Indians, since all these matters, in any event, were solely within the domain of the legislative authority, and its action is conclusive upon the courts.

The act of June 6, 1900, which is complained of in the bill, was enacted at a time when the tribal relations between the confederated tribes of Kiowas, Comanches, and Apaches still existed, and that statute and the statute supplementary thereto

dealt with the disposition of tribal property and purported to give an adequate consideration for the surplus lands not allotted among the Indians or reserved for their benefit. Indeed, the controversy which this case presents is concluded by the decision in *Cherokee Nation v. Hitchcock* (— U.S., —), decided at this term, where it was held that full administrative power was possessed by Congress over Indian tribal property.

In effect, the action of Congress now complained of was but an exercise of such power, a mere change in the form of investment of Indian tribal property, the property of those who, as we have held, were in substantial effect the wards of the Government. We must presume that Congress acted in perfect good faith in the dealings with the Indians of which complaint is made, and that the legislative branch of the Government exercised its best judgment in the premises. In any event, as Congress possessed full power in the matter, the judiciary can not question or inquire into the motives which prompted the enactment of this legislation. If injury was occasioned, which we do not wish to be understood as implying, by the use made by Congress of its power, relief must be sought by an appeal to that body for redress and not to the courts. The legislation in question was constitutional, and the demurrer to the bill was therefore rightly sustained.

The motion to dismiss does not challenge jurisdiction over the subject-matter. Without expressly referring to the propositions of fact upon which it proceeds, suffice it to say that we think it need not be further adverted to, since, for the reasons previously given and the nature of the controversy, we think the decree below should be affirmed.

And it is so ordered.

Mr. Justice Harlan concurs in the result.

[#15C]

(Senate Report to accompany H.R. 10418)

[S. Rep. No. 651, 58th Cong. 2d Sess. 1-12 (1904)]

AN AGREEMENT WITH INDIANS OF THE
ROSEBUD RESERVATION, S. DAK.

FEBRUARY 4, 1904.—Ordered to be printed.

Mr. GAMBLE, from the Committee on Indian Affairs,
submitted the following

REPORT.

[To accompany H.R. 10418.]

The Committee on Indian Affairs, to whom was referred the bill (H.R. 10418) ratifying and amending an agreement with the Sioux tribe of Indians of the Rosebud Reservation in South Dakota, and making an appropriation and provision to carry the same into effect, having had the same under advisement, make the following report and recommend that the bill do pass.

The bill in question was very fully and carefully considered by the Committee on Indian Affairs in the House, and an extended report recommending its passage was submitted thereon. The present bill is substantially the same as H.R. 50, upon which the report of the Department is based. It was modified to conform to the recommendations of the Department and reintroduced as H.R. 10418.

The subject-matter of the measure is so fully covered by the House report thereon, the substance thereof is hereby adopted and made a part of this report.

[From House Report No. 443, Fifty-eighth Congress,
second session.]

The purpose of this bill is to ratify and amend an agreement made with the Rosebud Indians in South Dakota by Inspector James McLaughlin, dated September 14, 1901, providing for the cession to the United States of the unallotted portion of their lands in Gregory County, S. Dak., and opening the same to settlement and entry under the homestead and town-site laws.

The area of the reservation embraced in Gregory County proposed to be ceded under this agreement is 416,141.24 acres. There are 452 Indians holding allotments in the county aggregating 104,999 acres.

The agreement, as made with the Indians, provided that the United States should pay for the land at the rate of \$2.50 per acre, and from the proceeds \$250,000 was to be expended in the purchase of stock cattle for the benefit of the Indians, and the balance was to be paid per capita in cash, in five annual installments. A bill for the ratification of this treaty and opening the land to settlement was transmitted by the Secretary of the Interior to Congress in the first session of the Fifty-seventh Congress. This bill provided simply for a ratification of the treaty and that the lands were to be disposed of under the provisions of the homestead law at \$2.50 per acre.

The bill was reported by this committee and was also favorably reported by the Committee on Indian Affairs in the Senate and passed the Senate. It appearing that the House was opposed to the passage of the same a new bill was presented late in the second session of the Fifty-seventh Congress, substantially the same as the present bill now under consideration, which was favorably reported by this committee, but too late in the session to have consideration in the House.

Both of these bills present a new idea in acquiring Indian lands, and if this bill should be enacted into law it will establish a new policy and be a departure from the policy that has long since prevailed in acquiring Indian lands, as heretofore it has been the practice and policy of the Government to purchase lands from the Indians and pay them therefor and then open the same to entry and settlement, and if not immediately, ultimately, under the provisions of what is known as the free-homestead act.

This bill provides that the lands shall be disposed of under the homestead laws by the settler paying therefor and the proceeds paid to the Indians, and it is expressly provided by section 6 of this bill that the United States shall in no manner be bound to purchase any portion of the land except the school sections, or to dispose of the same except as provided, or to guarantee to find purchasers for said lands, it expressly stating that the intention of the act is that the United States shall act as trustee for the Indians in disposing of the lands and pay over the proceeds from the sale thereof only as the same are received.

The provision that \$250,000 of the amount received shall be expended for purchase of stock cattle is in accordance with the original treaty and is considered a wise provision, as it will be better for the Indians than

to pay them entirely in cash, and thus enable them to better become self-supporting.

The bill further provides that not more than \$150,000 in cash shall be paid to the Indians in any one year, which is also substantially the same as the treaty provides. Section 4 of the bill provides that sections 16 and 36, or the equivalent of two sections in every township, shall be ceded to the State of South Dakota for school purposes and paid for by the United States at \$2.50 per acre, and section 5 provides for an appropriation of \$90,000 for this purpose. This is in conformity with the guaranty given to the State of South Dakota by Congress in the enabling act, which provides that in any reservations opened to settlement subsequent to the admission of the State into the Union sections 16 and 36 would be reserved and ceded to the State for school purposes.

The provision of the bill for payment for the land by settlers in installments is deemed a wise one, as it will make it easy for the settler to pay for the land and will also provide a fund to pay the Indians an annual per capita cash payment.

The price of the land is fixed by the bill at \$3 per acre for all that is entered during the first six months after the same shall be opened to settlement and entry, and the price thereafter to be \$2.50 per acre, with a provision that at the expiration of four years from the taking effect of this act all lands remaining undisposed of shall be sold and disposed of for cash, under rules and regulations to be prescribed by the Secretary of the Interior.

There is no question but what the Indians have no use for the land that is proposed to be ceded by this bill; that the tract is only a very small portion of the Rosebud Reservation, and is really only a corner of the

reservation, which will be left compact and in a square tract and a reservation about equal in size to the Pine Ridge Reservation, in South Dakota.

That in disposing of it the said Rosebud Indians will receive a per capita payment of \$30.50 each year for a period of five years, aggregating \$152.50 to each man, woman, and child, and it is thought that this payment and the matured increase that will be marketable from the stock cattle that will be given to the Indians under the terms of this bill will put them in a condition much more self-supporting than they are at present and relieve the Government from the responsibility and expense of caring for them.

Inspector McLaughlin, who negotiated the treaty with these Indians, in one of the councils said:

The census rolls show 4,917 persons belonging to this agency, which would give an annual per capita allowance of \$30.50; that is \$30.50 once a year to each man, woman, and child for a period of five years, aggregating \$152.50 that each man, woman, and child would receive in the five years.

At the expiration of five years, when this per capita payment would end, the matured increase derived from your stock cattle would then be marketable and continue to furnish a large number of beef cattle annually thereafter, which would place you upon an independent footing, and with proper care of your cattle would insure you a regular annual income. * * * Then the stock cattle, which, if properly cared for, will bring about a great deal of prosperity among you people. And in the third place, the cash payment for five years, which would enable you to take care of your families without any suffering until you begin to receive returns from the marketable cattle, the increase of the cattle that will be issued to you.

The passage of this bill will open for settlement 416,000 acres of land, which will be settled upon, cultivated, and improved, and turned into actual homes. This will enhance very materially the value of the 452 Indian allotments which are within the area proposed to be ceded, and it will also bring the Indians into contact with their white brothers, and give them the benefit of learning how to farm and raise stock from actual observation, and it will tend to make them more self-supporting, and be a great improvement upon their present condition, many of them being dependent upon the bounty of the Government, and the sooner Indian reservations are broken up and the Indians required to take their allotments and their surplus lands opened to settlement, the better it will be for the advancement and higher civilization of the Indian.

The principal question that the committee has had to determine in relation to this bill is, whether or not Congress has the right, and whether it should legislate to dispose of Indian lands without the consent of the Indians, and whether it would be proper to pass this bill without providing for submitting it to the Indians for their ratification and approval, in accordance with existing treaty stipulations. As to the power of Congress to so legislate there can be no question. That Congress has heretofore so legislated is established by the passage of a bill ratifying and amending a treaty with the Kiowa, Comanche, and Apache tribes of Indians in Oklahoma; the bill ratifying and amending said treaty was reported from this committee in the first session, Fifty-sixth Congress (see H.R. 342, 56th Cong., 1st sess.), and the principal objection urged against the ratification of the treaty in that case was, that it was not signed by three-fourths of the adult male Indians of the tribe, as provided by existing treaty stipulations.

The bill, however, was enacted into law, and subsequently the validity of the law and the right of Congress to legislate without the consent of the Indians was decided by the Supreme Court of the United States in the case of *Lone Wolf v. Hitchcock*, January 5, 1903 (187 U.S., p. 553), and in this connection attention is called to the report upon H.R. 50, made by the Commissioner of Indian Affairs, under date of January 9, 1904, which report, with a letter of the Secretary of the Interior, is herewith submitted, and the full decision in said case is also herewith appended.

While the committee recognizes the right of Congress to legislate without consent of the Indians, it is not prepared to say that it should do so in all cases, and only where after mature consideration it appears that the Indians will be benefited thereby, and that the circumstances justify such legislation.

In this instance there is a treaty executed strictly as provided by former treaty stipulations, more than three-fourths of the male adult Indians having signed the same. Furthermore, as appears by the report of the Commissioner of Indian Affairs, a treaty containing substantially the provisions of this bill, except that it only provided to pay the Indians \$2.75 per acre for their land, was submitted to the Rosebud Indians by Inspector McLaughlin in August last, and forty-eight more than a majority of said Indians signed the same. It appearing, therefore, that more than three-fourths of the male adult Indians signed the original treaty, that more than a majority were willing to sell at a less price than provided in this bill, and the fact that the Department recommends the passage of the measure, provided the Indians can be insured of a lump sum equal to \$1,040,000, the amount mentioned in the original treaty, and the committee having fixed a price

that it is believed will more than insure this amount it is thought wise and no hardship or even injustice to the Indians to have such a measure passed, and for that reason recommend the passage of the bill.

Upon the general question as to the policy of legislating for the Indians without consulting them or entering into any treaty whatever, attention is called to the report of the Commissioner of Indian Affairs, herewith submitted, and also to the testimony of the Commissioner before the committee, upon this point, as follows:

If you depend upon the consent of the Indians as to the disposition of the lands where they have the fee to the land, you will have difficulty in getting it, and I think the decision in the *Lone Wolf* case, that Congress can do as it sees fit with the property of the Indians will enable you to dispose of that land without the consent of the Indians. If you wait for their consent in these matters, it will be fifty years before you can do away with the reservations. You know, and Mr. Curtis especially knows, that the most intelligent tribe in the Indian Territory are the Cherokees; they are practically white, yet they were the last to consent to the distribution of their land, and did not so until the Curtis Act compelled them to consent to it, so that no matter to what stage of intelligence or growth or civilization an Indian tribe has attained, it does not necessarily follow that you will get their consent.

Take the case of the New York Indians which you had before you in the last Congress, and which, I assume, will come up again this year. If you depend upon the consent of those Indians to separate their lands and distribute their funds it will be fifty years before you get it. The public

policy, the policy of the Government, is against segregating and setting aside large tracts of land for the benefit of the Indians, which simply become festers on the surface of the country in which they are located. I believe in dealing fairly with the Indian. Give him what is absolutely his. Give him 80 or 160 acres, or if it is necessary, give him two or three hundred acres of grazing land, on which he can make a living under the conditions existing in the State where it is located. If the Indian has the right to the land, then, I think, you should set aside what funds are derived from it and pay them out gradually to him and not in a lump sum. I know I am running counter to the traditions of the office of my superiors in this, but hereafter, when asked to make any report on these bills, I shall report in favor of Congress taking the property of the Indians without their consent.

Mr. BURKE. Would you make that statement general or would you except reservations where there may be in existence treaty relations that provide directly to the contrary? For instance, do you know there is in existence among the Sioux—I think in the treaty of 1868—a provision that the Indians will not be deprived of their lands without the consent of three-fourths, and that provision was reenacted, I think, in the treaty of 1889.

COMMISSIONER JONES. I will go to the extreme. I do not think I would ask the consent of the Indians in that case. Supposing you were the guardian or ward of a child 8 or 10 years of age, would you ask the consent of the child as to the investment of its funds? No; you would not, and I do not think it is a good business principle in this case.

The price of the land as provided in the bill will not only insure the amount for which the Indians agreed to

sell, but in the opinion of the committee is a fair and just price for the same, and in view of all the circumstances the passage of the bill is recommended.

Letters from the Secretary of the Interior, transmitting the treaty to the Senate, together with the letter from the Commissioner of Indian Affairs in relation to same, dated November 23, 1901, are herewith appended.

Department of the Interior,
Washington, January 12, 1904.

Sir: I have the honor to acknowledge the receipt of your communication of the 15th ultimo, inclosing for report the bill H.R. 50, introduced by Mr. Burke, of South Dakota, "To ratify and amend an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation and provision to carry the same into effect."

In reply, I transmit herewith a copy of a report on the matter by the Commissioner of Indian Affairs, dated the 9th instant, in which after discussing the provisions of the bill, and referring at some length to the unsuccessful efforts of the Department to secure a new agreement with the Indians for the cession of the lands in question along the lines proposed in S. 7390 of the last session of the Fifty-seventh Congress (which bill failed of passage), the Commissioner suggests that the bill (H.R. 50) should be so amended as to insure to the Indians an average price of not less than \$2.50 per acre for the lands ceded by them; also that the provision in the bill authorizing the Secretary of the Interior, in his discretion, to grant

extensions of time to settlers within which to make their payments (line 25, p. 7, and lines 1, 2, and 3, p. 8) should be entirely eliminated.

I have the honor to especially invite the attention of the committee to the remarks of the Commissioner on these points, which are fully concurred in by me.

No objection will be offered to H.R. 50 if modified and amended as suggested.

Very respectfully,

E.A. Hitchcock, *Secretary*.

The Chairman of the Committee on Indian Affairs, House of Representatives.

Department of the Interior,
Office of Indian Affairs,
Washington, January 9, 1904.

Sir: The Office has the honor to acknowledge receipt, by reference from the Acting Secretary of the Interior, for report, of a letter dated December 15, 1903, from Hon. J. S. Sherman, chairman of the House Committee on Indian Affairs, with which he transmits a copy of H.R. 50, Fifty-eighth Congress, first session, providing for the ratification and amendment of the agreement with the Rosebud Indians in South Dakota, upon which he states he would like to have a report from the Department.

Reporting upon this bill, the Office deems it proper at the very outset to invite attention to the fact that the same proposes to open the surplus lands of the Rosebud Indians, situated in Gregory County, for public settlement and dispose of the same without the consent of the Indians to the terms thereof.

The bill has been compared with and found to be similar to S. 7390, Fifty-seventh Congress, second session, upon which the office made a report under date of February 25, 1903, with the exception that the fifth section of said S. 7390, which provided that the agreement as amended should take effect only upon acceptance thereof and consent thereto by the Rosebud Indians, is omitted in said H.R. 50.

The essential features of the bill now in hand, aside from the omission of the provision that the same shall be effective only when accepted by the Indians, are as follows:

(1) Instead of paying the Indians a lump sum of \$1,040,000 for the surplus Gregory County lands, as provided in the agreement of September 14, 1901, it is proposed to dispose of the lands to settlers under the provisions of the homestead and town-site laws, excepting sections 16 and 36, or the equivalent thereof, at not less than \$2.50 per acre, the proceeds arising from such sale to be paid to the Indians in the manner provided for in said agreement.

(2) Sections 16 and 36 in each township, or their equivalent, are to be reserved for the use of the common schools of South Dakota and are to be paid for by the United States at the rate of \$2.50 per acre. The selections are to be made prior to the opening of the lands to settlement.

(3) Of the proceeds arising from the sale of the lands ceded, the sum of \$250,000 is to be expended in the purchase of stock cattle, which are to be issued to the Indians as equally as possible, it being provided, however, that not more than half the money received in any one year shall be thus expended. The other half is to be paid to the Indians per capita in cash. The payments are to be paid in the month of December of each year until

all the lands are fully paid for and the funds disbursed among the Indians.

(4) The homestead settlers entering said lands are to pay for the same at the rate of \$2.50 per acre, of which money 50 cents per acre is to be paid at the time of entry and 50 cents per year during the next four years until the total amount is paid up. If the entryman fails to make any of the payments within the right time required, it is provided that all of his rights shall cease and his entry shall be held for cancellation, unless the Secretary of the Interior excuses the failure to pay after good cause is shown.

(5) All the lands remaining undisposed of to homestead settlers at the expiration of four years are to be sold at public auction, to the highest bidder for cash, under regulations to be prescribed by the Secretary of the Interior, in tracts not exceeding 160 acres to any one person, at not less than \$2.50 per acre.

(6) The last section of the bill stipulates that the United States shall act only as trustee for said Indians in disposing of the lands and in expending and paying over the proceeds derived from their sale, and that the Government shall not be bound in any manner to purchase any of said lands, excepting sections 16 and 36, or to dispose of the same otherwise than as proposed in the bill, or to guarantee to find purchasers for the same, or for any portion thereof.

The propositions of the bill as above set forth, it will be noted, differ most materially from the provisions contained in the agreement of September 14, 1901, which stipulated for the purchase of the lands ceded by the United States for the lump consideration of \$1,040,000. Senate bill No. 7390, Fifty-seventh Congress, second session, already referred to, was similar to the bill now in hand with

the exception, as indicated above, that section 5, which provided for the acceptance and consent of the Indians to the terms proposed, is now eliminated and stricken out. Under date of February 25, 1903, the Office reported upon said S. 7390, and stated that in view of the fact that the same contained provision for the consent of the Indians to the bill before it should become binding, the Office would interpose no objection thereto.

The bill was not, however, passed by Congress, and during the past summer, at the request of the entire South Dakota delegation in Congress, an effort was made to conclude a new agreement with the Indians of the Rosebud Reservation for the cession of the lands in question along the lines contained in said S. 7390. Draft of instructions for the guidance of the United States Indian inspector, James McLaughlin, in the conduct of negotiations for such agreement were prepared by this office, dated June 30, 1903, and approved by the Department July 3, 1903.

Under date of August 31, 1903, Inspector McLaughlin reported his failure to conclude an agreement with the Indians on the terms proposed. His negotiations with the Indians and his journey over the reservation for the purpose of securing signatures from the Indians cover a period of about six weeks, as shown by his report. He stated that the Indians were unanimous in refusing to assent to the bill as presented to them, the main opposition, as shown by the proceedings of the several councils, being based upon the statements that the lands in question are worth more per acre than the amount proposed to be paid to them therefor. After making some material modifications in the terms of the agreement, which would result in the procurement for the Indians of a larger price for their lands, the inspector succeeded in

getting a majority of the signatures of the 125 Indians present at the council. The additional signatures were obtained by visits to the several camps until a total of 737 signers had been procured. While this was 48 more than half the male adult Indians of the reservation, it still lacked 296 of the required three-fourths majority.

One of the modifications made by the inspector in the agreement as signed was that settlers on the lands entered as homesteads should pay therefore at the rate of \$2.75 per acre instead of \$2.50, as proposed in the bill. The amount which the Government was to pay, however, for sections 16 and 36 was left at \$2.50 per acre, as in the original bill. This the inspector considered to be just and equitable, for the reason that the school lands would be paid for by direct appropriation of Congress and would be immediately available upon the ratification of the agreement, whereas the homestead tracts would be paid for in six installments running for a period of five years.

Another modification made was to the effect that the lands remaining undisposed of to homestead settlers at the expiration of four years should be disposed of at public auction in tracts not exceeding 160 acres, without restriction as to the number of tracts that might be purchased by any one bidder. This modification the inspector thought would result in the sale of some of the rougher and less desirable tracts to ranchmen as ranges, whereas they would not be bought by individual purchasers in 160-acre tracts.

A careful reading of the council proceedings, which were quite prolonged, and full transcripts of which the inspector transmitted with his report, discloses the fact that the main objection of the Indians to the proposition submitted was that the price to be received by them for their lands was

inadequate and that it would not even guarantee the procurement by them of as much money as was stipulated for in the agreement of September 14, 1901, and with the additional uncertainty that the payments by the settlers might not be made at all.

When the agreement of September 14, 1901, was being concluded the Indians argued with great persistency that their lands were worth more than \$2.50 per acre, and they were almost unanimous in declaring that they were well worth \$5 per acre. Since that time several petitions have been received from the Rosebud Indians earnestly protesting against the ratification of said agreement because of the inadequacy of the compensation. Letters from outside and apparently disinterested parties were also received indicating that the lands were worth a considerably larger price than that agreed to be paid. In fact, one offer was made by parties to take all the lands covered by the cession at the rate of \$5 per acre. On this point the Office seems warranted in saying that from the best information it has been able to obtain a considerable portion of these lands is worth perhaps two or three times the amount proposed to be charged to homestead settlers therefor, and that no doubt the entire tract taken as a whole, exclusive of the allotments, is worth considerable more than \$2.50 per acre.

The Indians can not see, as indicated in their talks and councils and as reported by Inspector McLaughlin, why they should not procure such price for the lands as settlers are willing to pay for them. The Indians in their talks have shown themselves to be not unreasonable in their demands, but simply persisted in demanding what they believed to be just and proper. In fact, many of the Indians during the councils last summer indicated that if the propositions under consideration would

guarantee the procurement by them of as much money as was stipulated for in the agreement of September 14, 1901, that they would not oppose the same. They felt, however, that there was no certainty that they would realize even \$2.50 per acre for the lands proposed to be ceded.

The proposition now made, as contained in said H.R. 50, evidently rests on the assumption that the consent of the Indians to the cession of the lands in question on proper terms can not be procured, and that therefore the lands must be disposed of, if at all, without the consent of the Indians. There is no doubt but that such action by Congress is warranted under the decision of the Supreme Court in the case of *Lone Wolf v. Hitchcock*, handed down on January 5, 1903 (187 U.S., p. 553).

So far as the treaty relations of the Indians with the United States are concerned, the status of the Rosebud Indians is almost identically similar to that of the Kiowas, Comanches, and Apaches, whose treaty was under consideration in the *Lone Wolf* decision. Article 12 of the treaty of April 20, 1868, with the Sioux tribe of Indians (15 Stats. p. 635), contains the following provision:

"No treaty for the cession of any portion or part of the reservation hereon described, which may be held in common, shall be of any validity or force as against the said Indians unless executed and signed by at least three-fourths of all the adult male Indians occupying or interested in the same," etc.

Although the Kiowa Indians had entered into treaty stipulations with the United States similar to the foregoing, the court, in the *Lone Wolf* case, held that the contention that the Indians could not be divested of their tribal property without their consent was untenable, and that the power of

Congress to abrogate the provisions of an Indian treaty had always existed. The court said:

"To uphold the claim would be to adjudge that the indirect operation of the treaty was to materially limit and qualify the controlling authority of Congress in respect to the care and protection of the Indians, and to deprive Congress, in a possible emergency, when the necessity might be urgent for a partition and disposal of the tribal lands of all power to act if the assent of the Indians could not be obtained."

It was further held that plenary authority over the tribal relations of the Indians had always been exercised by Congress, and that the power to do so has always been deemed a political one, not subject to be controlled by the Judicial Department of the Government. This power, in the opinion of the court, is a necessary one from the very nature of the relation sustained by the Government toward the Indians and its duty to protect its wards in all their relations.

Respecting the exercise of its power in dealing with the property and other interests of the Indians the court said:

"The power exists to abrogate the provisions of an Indian treaty, though presumably such power will be exercised only when circumstances arise which will not only justify the Government in disregarding the stipulations of the treaty but may demand, in the interest of the country and the Indians themselves, that it should do so. When, therefore, treaties were entered into between the United States and a tribe of Indians it was never doubted that the power might be availed of from considerations of governmental policy, particularly if consistent with perfect good faith toward the Indians."

Whether or not the case in hand respecting the Rosebud Indians is such as to justify Congress in disregarding the treaty stipulations, and in opening up and disposing of the lands without the consent of the Indians, is one that must be left to the judgment and wisdom of Congress to determine.

As a general proposition the Office has to say that after careful and mature consideration it is of the opinion that the time has come when Congress and the Indian Department are warranted in administering the tribal interests of the Indians in the United States, including the matter of disposing of such of their lands as they do not need and do not use, without consulting the Indians affected in reference thereto.

It must be assumed, of course, in the adoption of any such policy that those charged with the duty of administering the affairs of the Indians will act in every instance in perfect good faith, and will see that the rights and interests of the Indians are fully preserved and enforced. If, therefore, the bill in hand is to be enacted into law, it is respectfully submitted that the same should be so amended as to insure the procurement to the Indians of an average price of at least \$2.50 per acre for all the lands in question.

The Office is convinced not only that the lands in question are well worth the price indicated as a whole, but that the bill as it now stands will not secure for the Indians the price named. Necessarily a considerable portion of the lands will not be disposed of under any conditions at \$2.50 per acre. In order therefore to procure this price for the whole the better lands must be sold for more than the price fixed in the bill.

Another feature of the bill which the Office is positively of the opinion should be changed is that contained in line 25, page 7, authorizing the

Secretary of the Interior, in his discretion, to grant an extension of time to the settler for good cause within which to make his payments. This provision, or any provision authorizing the extension of time to the settler, should be entirely eliminated and omitted, and the Office so recommends.

From ample experience gained in similar provisions in the past the Office feels justified in stating that if the privilege of deferring payments is extended to settlers for any cause that requests for such extensions will be made and multiplied by them until it will become next to impossible to secure payment at all. If the plan of disposing of the Indian lands now proposed is to be adopted, it is respectfully submitted that good faith toward the Indians requires that the payments of the settler shall be absolutely and promptly made, and that there shall be no default whatever. If this be not insisted upon at all times and in every case by Congress and the Indian Department, then there can be no assurance that the Indians will receive for their lands the sum intended to be procured for them and the amount that will be necessary in order to bring them adequate compensation for their lands.

With the modifications and amendments to the bill as above recommended, the Office is of the opinion that the interests of the Indians will be fully conserved and that reasonable compensation will be secured for them for their lands. If so amended, therefore, the Office will interpose no objection to its enactment into law.

The letter of Mr. Sherman and the accompanying bill are herewith returned, and a copy of Office report is inclosed.

Very respectfully,

W.A. Jones,
Commissioner.

The Secretary of the Interior.

Department of the Interior,
Washington, December 6, 1901.

Sir: I have the honor to transmit herewith a copy of a report of the Commissioner of Indian Affairs, dated the 23d ultimo, and accompanying copy of an agreement, dated September 14, 1901, between United States Indian Inspector James McLaughlin and the Indians of the Rosebud Reservation, S. Dak., providing for the cession to the United States of the unallotted portion of their lands embraced in Gregory County, S. Dak., with the draft of a bill prepared by the Commissioner of Indian Affairs and the Commissioner of the General Land Office ratifying the agreement, and accompanying papers.

This agreement has been carefully considered by the Commissioner of Indian Affairs, and as it seems fair and reasonable, and the terms the best that could be obtained, I have the honor to recommend that it receive favorable action by the Congress.

Very respectfully, E.A. HITCHCOCK
Secretary.

THE PRESIDENT PRO TEMPORE UNITED STATES
SENATE.

Department of the Interior,
Office of Indian Affairs,
Washington, November 23, 1901.

Sir: The Office has the honor to acknowledge the receipt of a letter, dated October 11, 1901, from the Acting Secretary of the Interior, transmitting a report by United States Indian Inspector James McLaughlin, dated October 5, 1901, with which he inclosed an agreement, dated September 14, 1901, with the Indians of the Rosebud Reser-

vation, in South Dakota, providing for the cession of the unallotted portion of their lands embraced in Gregory County. In his said letter the Acting Secretary directed that if the Office, after consideration, finds no objection to the approval of said agreement, proper report be prepared for presentation to Congress with a view to the ratification of the agreement.

The question of securing the cession of the lands referred to was first suggested during the first session of the Fifty-sixth Congress, when bills providing for negotiations to that end were introduced. Aside from the fact that the lands in question, which are not being used by the Indians, are very desirable for agricultural purposes, the main reason put forward for having the lands opened up was that at the present time the larger portion of Gregory County was embraced in the Indian reserve, so that it was difficult for the remainder of the county to maintain the county organization.

The Office has also had a great deal of correspondence with the people at large during the past two years in reference to the opening of said lands.

No Congressional authority for conducting negotiations, however, was granted until, by a provision contained in the last Indian appropriation act, approved March 3, 1901, the Secretary of the Interior was authorized, in his discretion, to negotiate through a United States Indian inspector with any Indians for the cession of portions of their respective reserves. Accordingly, under date of March 9, 1901, a draft of instructions was prepared by this Office for the guidance of the United States Indian inspector conducting negotiations with the Rosebud Indians for the lands referred to. Said instructions were approved by the

Department on March 21, 1901, and Inspector McLaughlin detailed for the duty of conducting negotiations.

In his report, dated October 5, 1901, the inspector states that he arrived at the Rosebud Agency on April 2, 1901, for the purpose of entering upon negotiations with the Indians, and that upon his arrival it was ascertained that smallpox was prevalent on the reservation, wherefore he deemed it inadvisable to assemble the Indians in general council. He states, however, that he made a trip to the Ponca Creek district, which is in Gregory County, about 100 miles east of the agency, for the purpose of conferring with the Indians there who would be the most affected by the cession, and for the purpose of traveling over that portion of the reserve and securing a knowledge of the lands whose session it was proposed to secure.

Negotiations having been postponed at that time, with the approval of the Department, the inspector states that he proceeded to carry out orders elsewhere, and returned to the Rosebud Agency on August 28 last and at once entered upon negotiations which, though somewhat protracted and at times discouraging, he says have been satisfactorily concluded.

Article 1 of the agreement concluded by the inspector with said Indians provides that in consideration of the sum thereafter named the Indians cede to the United States all that portion of their reservation not allotted situated and lying east of the tenth guide meridian. Said guide meridian forms the township line between townships 73 and 74 west, and is also the west boundary line of Gregory County, so that the lands ceded embrace all of the Indian reservation not allotted situated in said county.

Article 2 stipulates that in consideration of the cession agreed to by article 1 of the agreement the United States will expend for and pay to the Rosebud Indians the sum of \$1,040,000.

Article 3 provides that \$250,000 shall be expended in the purchase of stock cattle of native range or graded Texas 2-year-old heifers and graded Durham or Hereford 2-year-old bulls for issue to said Indians, the same to be distributed as equally as possible among the men, women, and children as soon as practicable after ratification of the agreement.

This article further provides that the balance of the consideration, \$790,000, shall be paid to the Indians per capita in cash in five annual installments of \$158,000 each, the first of such cash payments to be made within four months after the ratification of the agreement.

Article 4 provides that all persons of the reservation who have received allotments and are now recognized as members of the tribe, belonging on the reservation, including mixed-bloods, whether their white blood comes from the paternal or maternal side, and the children born to them, shall enjoy the undisturbed and peaceable possession of their allotted lands, and shall be entitled to all the rights and privileges enjoyed by full-blood Indians. This article further provides that white men theretofore lawfully intermarried into the tribe and now living with their families upon the reserve shall have the right of residence thereon not inconsistent with existing statutes.

Article 5 provides that nothing in the agreement shall be construed to deprive the Indians of any benefits to which they are entitled under existing treaties or agreements not inconsistent with the provisions of this agreement.

Article 6 stipulates that the agreement shall not take effect and be in force until the same is accepted and ratified by the Congress of the United States.

The agreement is dated, September 14, 1901, and contains the signatures of James McLaughlin, United States Indian inspector, and of 1,031 male adults Indians of the reservation. A certificate dated October 4, 1901, by William Bordeaux, official interpreter, and William F. Schmidt, special interpreter, is appended to the agreement to the effect that the provisions thereof were fully explained by them to the Indians in open council, that it was fully understood by them before signing, and that the signatures, though the names are similar in some cases, represent different individuals in each instance, as indicated by their respective ages.

Another certificate is attached to the agreement, dated October 4, 1901, by Frank Mullen, agency clerk, and by C.H. Bennett, John Sullivan, Frank Robinson, Frank Sypal, Isaac Bettelyoun, and James A. McCorkle, farmers of the several districts of the reservation, and Louis Bordeaux, ex-farmer of the agency district, to the effect that they witnessed the signatures of United States Indian Inspector McLaughlin and of the 1,031 Indians of the Rosebud Agency to the agreement.

A certificate dated October 4, by United States Indian Agent Charles E. McChesney, is also attached, stating that the total number of male adult Indians over 18 years of age belonging on the reservation is 1,359, of whom 1,031 have signed the agreement, being 12 more than three-fourths of the male adult population of the reservation.

Respecting the terms of the cession, Inspector McLaughlin states in his report that he was greatly handicapped in the beginning by the fact

that most of the Indians who favored a cession at all held the lands at an enormous price—from \$7 to \$15 per acre; that only a very few expressed their willingness to accept as low as \$5 per acre, and this in cash and all in one payment; that upon his arrival all the white men connected with the agency, as well as those of the surrounding country with whom he talked, held the lands in question as worth \$5 per acre; that it appeared that adjacent lands in Gregory County and in Hoyt County, Nebr., were selling at from \$5 to \$10 per acre; that a syndicate of cattlemen in Sioux City, Iowa, expressed its willingness to pay \$5 per acre for the entire tract, and that these current rumors and fictitious values placed upon the lands which were circulated among the Indians exercised them very much and had to be overcome by reasoning, which required time and a great amount of patience.

Having been unable to get the Indians to fix a price upon the lands in his first councils with them, the inspector states that in the council held September 12 he made them a flat offer of \$2.50 per acre for the tract, stating that this was double the minimum price of Government lands and full value for their unallotted lands in Gregory County; that whilst he regarded the land worth that amount, it was all that it was worth, and that his offer would not be increased, whereupon a number of the older men withdrew from the council; that, however, he succeeded in having a majority of those assembled remain until another council had been arranged for September 14, on which latter date an agreement was reached.

The inspector refers to the minutes of the council proceedings transmitted with his report as showing the numerous questions raised by the Indians and his answers to their contentions; also,

as showing that he finally convinced a number of the leading men of the wisdom of cooperating with him in formulating an agreement.

The inspector states that the land in Gregory County is without doubt the best and most desirable portion of the Rosebud Reservation, and that although the allotments embrace much of the choicest land, yet a great deal of good land remains unallotted. The whole tract, he says, is excellent grazing land, and the greater portion is also good agricultural land, upon which excellent crops can be raised when there is sufficient rainfall during the growing season. He says he regards the compensation stipulated in the agreement as very reasonable and at the same time a fair and just price for the lands.

According to the inspector's report, the area of the portion of the Rosebud Reservation embraced in Gregory County is 521,050.24 acres, of which 104,909 acres have been allotted to 452 Indians, leaving 416,141.24 acres unallotted, which was stated in the agreement as approximating 416,000 acres, for a definite lump sum, at \$2.50 per acre, of \$1,040,000.

The inspector adds that the cession covers 160 acres reserved for the Ponca Creek issue station, 40 acres for the Ponca Creek Day School, 78.76 acres for the Catholic Mission, and two tracts of 80 and 40 acres, respectively, for the Congregational Mission—a total of 398.67 acres thus being reserved.

Respecting the disposition to be made of the proceeds arising from the cession, the inspector states that the stock cattle provided for by article 3 will be of great benefit to the Indians, who have such magnificent stock ranges upon their reservation, and that the cash payment for five years, will aid the Indians materially in providing for their family needs during that time, after which the

matured cattle, the increase from the stock issued to them, will be marketable and will, with proper care, give them an annual revenue thereafter. The inspector states that he was very desirous of having the agreement provide for the construction of dams and reservoirs on arid portions of the reservation, and also for the purchase of lumber for the construction of houses, and that both he and Agent McChesney endeavored by sound reasoning to have the Indians accept such provisions, but to no purpose, they maintaining that those in need of dams could construct the same themselves, and those requiring lumber could purchase it with the money they received as their per capita payments.

They insisted that if lumber were provided for issue to the Indians an equal per capita distribution of it could not be made. The Indians insisted for a long time upon having the entire \$790,000 paid to them in cash in one payment in five annual installments, which he says will approximate about \$30 per capita annually for five years.

The inspector transmits with his report a map, prepared by Special Allotting Agent W.A. Winder, of the portion of the reservation proposed to be ceded, which shows the several Indian allotments therein, with the names of the allottees, and also the unallotted portions; also a package of correspondence had with the State authorities of South Dakota relative to the boundaries of Gregory County, and the description of the eastern portion of the reservation.

In conclusion, the inspector states that he regards the compensation and manner of payment provided in the agreement as just and fair, both to the Indians and to the United States; that the manner of payment was the best, both for the Indians and for the Government, that the Indians would accept; that the stock cattle and the five

annual cash payments will be of great benefit to the Indians in giving them a good start toward their self-support. He heartily recommends the approval and ratification of the agreement.

The agreement appears to be properly executed and in form for acceptance and ratification by Congress. It is deemed proper in this connection to refer especially to the provisions of article 4, which are evidently intended to fix the status of mixed-blood Indians upon that reservation, and to insure the undisturbed residence thereon of white men intermarried with the Indians. It does not appear that this provision extends to mixed bloods as a class any rights or benefits that they did not have before, unless possibly to secure rights to children born of a marriage since the enactment of the provision contained in the Indian appropriation act of June 7, 1897 (30 Stat., p. 62), which reads as follows:

"That all children born of a marriage heretofore solemnized between a white man and Indian woman by blood and not by adoption, where said Indian woman is at this time, or was at the time of her death, recognized by the tribe, shall have the same rights and privileges to the property of the tribe to which the mother belongs, or belonged at the time of her death, by blood, as any other member of the tribe, and no prior act of Congress shall be construed as to bar such child of such right."

Respecting the residence of white men intermarried with Indian women, it may be proper to state that this right has always been extended in such cases and permitted so long as the conduct of such white men on the reservation is not detrimental to the peace and welfare of the Indians. The Office sees no serious objection to the embodiment of this article in the agreement.

The compensation agreed upon for the land ceded, amounting to about \$2.50 per acre, is, in the judgment of this Office and from the best information obtainable, fair and reasonable. Although it might have been better to have had the consent of the Indians to the disposition of a larger portion of the proceeds, under the direction of the Secretary of the Interior, for their benefit, it will be seen from the report of the inspector and the transcript of council proceedings that the Indians would not consent to the distribution of any portion of the \$790,000 otherwise than in cash.

The office has accordingly prepared a draft of a bill embodying the agreement providing for the acceptance and ratification of the agreement. Section 2 of said draft provides for the appropriation of \$408,000, the amount necessary to carry the provisions of articles 2 and 3 of the agreement into effect.

The matter of the disposition of the land ceded is one properly for the Department and the Commission of the General Land Office to arrange. It is suggested that such disposition may be provided for by the addition of another section to the draft of the bill inclosed. In this connection it is suggested that the section added should provide for the disposition of the lands ceded, "excepting such tracts as may be reserved by the President, not exceeding 398.67 acres in all, for subissue station, Indian day school, one Catholic mission, and two Congregational missions."

Besides the draft of the bill in duplicate, there are transmitted herewith two copies of the agreement, two copies of the council proceedings, two copies of correspondence had by Inspector McLaughlin with the State authorities of South Dakota respecting the boundaries of Gregory

County, two blue prints of map, and two copies of this report, with the recommendation that one copy of each be transmitted to the Senate and House of Representatives, respectively, with request for favorable action on the agreement.

The original agreement and papers accompanying the same are transmitted herewith, with the request that they be returned to the files of this Office when the same shall have served their purpose.

Very respectfully, your obedient servant,

W.A. Jones, *Commissioner.*

The Secretary of the Interior.

[#15D]

(Senate document concerning H.R. 10418)

[S. Doc. No. 158, 58th Cong. 2d Sess. 1-7 (904)]

ROSEBUD INDIANS OF SOUTH DAKOTA.

Mr. COCKRELL presented the following

MEMORIAL OF THE INDIAN RIGHTS ASSOCIATION, ON BEHALF OF THE ROSEBUD INDIANS OF SOUTH DAKOTA, RELATING TO THE PROPOSED SALE OF 416,000 ACRES OF THE LANDS OF THEIR RESERVATION.

February 15, 1904.—Referred to the Committee on Indian Affairs and ordered to be printed.

Agency of the Indian Rights Association,
Washington, D.C, February 15, 1904.

A memorial of the Indian Rights Association on behalf of the Rosebud Indians, of South Dakota, relating to the proposed sale of 416,000 acres of the lands of their reservation, showing that in fairness and good conscience the price proposed to be paid them by the bill H.R. 10418 is inadequate, and petitioning that justice may prevail.

To the Congress of the United States:

On behalf of the Rosebud tribe or band of Sioux Indians, of Rosebud Reservation, S. Dak., and at their

request, we appeal for a hearing of the claims of these Indians; that they will suffer great injustice if the bill H.R. 10418, now pending before the Senate, be enacted into law.

Briefly, the bill proposes to dispose of 416,000 acres of the Rosebud Indian lands lying in Gregory County, S. Dak., without Indian consent, at prices ranging from \$3 per acre downward, according to date of purchase, etc., the Government acting only as trustee for the Indians, especially providing that it does not guarantee any part of the purchase price.

The bill sets up an agreement secured from the Indians in 1901, wherein the latter were guaranteed \$1,040,000 for these lands by the Government (being \$2.50 per acre).

The Supreme Court of the United States while deciding (Lone Wolf case, October term, 1902) that Congress was vested with authority to disregard treaties made with our Indian tribes, presupposes that in our dealings with the Indians absolute justice will be done them. The court says:

The power exists to abrogate the provisions of an Indian treaty, though presumably such power will be exercised only when circumstances arise which will not only justify the Government in disregarding the stipulations of the treaty, but may demand, in the interest of the Government and the Indians themselves, that it should do so, * * * It was never doubted that the power to abrogate existed in Congress, and that in a contingency such power might be availed of from considerations of governmental policy, particularly if consistent with perfect good faith toward the Indians.

We must presume that Congress acted in perfect good faith in the dealings with the Indians, * * * and that the legislative branch of the Government exercised its best judgment in the premises.

The Congress having assumed absolute control, by guardianship, of the Indians, it must accept the added responsibility of providing for absolute justice to these wards.

If an obligation of the Government entered into with the Indians may be broken at will by reason of incapacity of the ward, we can not in justice nor good conscience hold the ward to an admission in a former agreement as to the value of lands. Furthermore, the agreement set up in the bill is alleged to have been secured through strenuous effort. The Indians claim they were given to understand that the Government would take their lands anyway at the Government price, \$1.25 per acre, if they did not agree to accept \$2.50 per acre.

As already stated, it is not necessary to dwell upon the history surrounding the agreement of 1901. Congress proposes to disregard it in important particulars by withdrawing its guaranty of payment of the purchase money, and resolving the Indians to the uncertain payment of settlers upon the lands, who, upon becoming delinquent, usually appeal to Congress for extension of the time of payment, and indeed for the remission of the debt. This plan in the past has been found to result sometimes in frittering away the Indian estate.

In brief, the agreements are held not to be binding upon the Government, and therefore the Indians, as the other contracting party, are fully released.

To set up the agreement of the Indian tribe, therefore, in the bill is useless and can not be otherwise than misleading. The question resolves itself to this: What is the actual value of the land proposed to be sold by the guardian Government?

Reuben Quickbear, president of the Rosebud Indian Council, writes as follows:

Rosebud, S. Dak., *January 18, 1904.*

Dear Sir: I suppose you know that Mr. Burke's bill taking our Gregory County land without our consent and at a merely nominal price is now in the hands of Mr. Sherman, chairman of the House Committee on Indian Affairs.

If ever we needed help we need it now, and badly. Mr. Clark, the Episcopal missionary here, has written to Mr. Sherman protesting against the amount offered—or rather thrust at us—for the land. He has been here for years and knows the value of it. A real estate man recently went over it and told a friend of mine that he would gladly give \$10 an acre for the whole tract, and could raise the money in three weeks. Over a year ago a syndicate offered the Commissioner \$5 per acre for the whole tract, and land around here has since doubled in value. We only ask \$5 per acre.

We call on the Indian Rights Association to help us in this our hour of need, and ask you to protest to Mr. Sherman against the passage of this unjust bill.

Ask that three men be appointed to value the land—one to be appointed by the Commissioner of Indian Affairs, one by the Indians, and these two to select a third, as was done when the Omaha Reservation was valued years ago. If this proposal is entertained the South Dakota delegation will at once consent to \$5 per acre, as they well know that any halfway fair valuation would be far more than that. A shyster lawyer named Backus is in Washington stating that our land is not worth more than \$2.50 per acre. He lives in Bonesteel, in Gregory County, and has been sent by the people there to help beat us in this land deal.

Yours, truly, Reuben Quick Bear,
President of the Indian Council.

Mr. Herbert Welsh, *Philadelphia, Pa.*

As shown by the report (dated January 9, 1904) of the honorable Commissioner of Indian Affairs, on the bill in question, the Indians were not satisfied with the price offered them. He states:

When the agreement of September 14, 1901, was being concluded, the Indians argued with great persistency that their lands were worth more than \$2.50 per acre, and they were almost unanimous in declaring that they were well worth \$5 per acre. Since that time several petitions have been received from the Rosebud Indians earnestly protesting against the ratification of said agreement because of the inadequacy of the compensation. Letters from outsiders and apparently disinterested parties were also received indicating that the lands were worth a considerably larger price than that agreed to be paid. In fact one offer was made by parties to take all the lands covered by the cession at the rate of \$5 per acre. On this point the Office seems warranted in saying that from the best information it has been able to obtain a considerable portion of these lands is worth perhaps two or three times the amount proposed to be charged to homestead settlers therefor, and that no doubt the entire tract taken as a whole, exclusive of allotments, is worth considerably more than \$2.50 per acre.

The Sioux City Journal (Sioux City, Iowa) of July 2, 1903, regards the tract as comprising fine lands, and says:

ROSEBUD OPENING DUE SOON—MAJOR M'LAUGHLIN ABOUT TO MAKE TREATY WITH INDIANS—APPOINTMENT FOR J.D. KELLER—FORMER SUPERINTENDENT OF SCHOOLS OF WOODBURY COUNTY MADE

UNITED STATES COMMISSIONER AT BONE-STEEL, S. DAK.-TO TAKE ACTION NEXT SESSION.

Persons who have been interested in the opening of the Rosebud Indian Reservation in South Dakota will be encouraged by the news that the reservation will almost without question be thrown open to settlement after the next session of Congress.

Such action will be made possible by a new treaty with the Indians, which is to be made by Maj. James McLaughlin, of the Indian Department, Washington, D.C., who was in Sioux City this week, en route from Washington to North Dakota on business with the Indians.

The news of the new treaty was brought to Sioux City by Joseph D. Keller, of Bonesteel, S. Dak., of the real estate firm of Rathman & Keller, who is here for a brief visit with friends.

Mr. Keller formerly was county superintendent of schools for Woodbury County. Fourteen months ago he left Sioux City for Bonesteel, and has been doing well there.

"Major McLaughlin is now in North Dakota, attending a powwow of the Indians, with whom he has a strong friendship all over the Northwest. He is to go to the Rosebud Reservation in South Dakota and meet the Indians there. This is the primary object of his trip west," according to a letter which Congressmen Burke, of South Dakota, has received from Commissioner Jones, of the Indian Bureau.

"There are 416,000 acres of land on the reservation to be opened. Most of it is fine land. Not a mile and a half from the reservation boundary the other day we sold a quarter section to a Pierson, Iowa, man for \$5,000. So you see the land is not

bad. There will be 2,600 quarter sections to be allotted to settlers when the reservation is opened. We have received frequent inquiries about the land from all over the country.

"You see, Congress balked on the deal because it would necessitate an appropriation of \$1,500,000 to buy the land from the Indians and the purpose of the new treaty will be to make a deal by which the Indians will wait a certain length of time for their money, which the settlers will pay in in proving up, instead of looking to the Government for it."

Mr. Keller has just been appointed United States commissioner at Bonesteel, his jurisdiction extending over Gregory County and a large stretch of country west of that county. By virtue of his official position he probably will be given charge of the drawing by settlers for the Rosebud lands when the reservation is opened.

Bonesteel, S. Dak., lies on the border of the Indian lands referred to. A circular issued by a Bonesteel land company shows conclusively their opinion as to the value of lands in that section of the country. It read as follows:

Rosebud Indian Reservation.

Four hundred and sixteen thousand acres of choice lands to be thrown open to settlement under the homestead laws.

While the date has not been determined definitely, it is generally conceded by those in a position to know, that the drawing will be held in Bonesteel in the early summer of 1904.

Those wishing full information should send 50 cents for large sectional map showing entire county, also names of all allottees.

Briefly, stated, Gregory County is one of the best in the State of South Dakota, because—

First. The soil is heavier.

Second. The water is better.

Third. There is no surface stone.

Fourth. The rainfall is heavier.

Fifth. There has never been a failure of crops.

Sixth. Timothy and clover grow well here.

Seventh. This section of country is better adapted to the raising of hogs and cattle, as corn yields well each year.

Eighth. Land values are steadily advancing.

Ninth. The prospects for a bounteous harvest was never better in any country.

Tenth. We are in direct communication with both the Sioux City and Omaha markets.

Read descriptions and prices of land:

* * * * *

18. Ninety acres, choice farm land, $3\frac{1}{2}$ miles from town; frame house and good well. Price, \$35 per acre.

19. One hundred and sixty acres, $2\frac{1}{2}$ miles from town; good house, all fenced, 140 acres in crop. Price, \$26 per acre.

20. One hundred and sixty acres, 10 miles from town; 100 acres in crop, all fenced. Price, \$26 per acre.

21. One hundred and sixty acres, 7 miles from county seat; 135 acres in cultivation. Price, \$32 per acre.

22. One hundred and sixty acres, $2\frac{1}{2}$ miles from town; good farm land; 120 acres in crop, all fenced; good well, 18 feet deep. Cheap at \$35 per acre.

23. Three hundred and twenty acres, $1\frac{1}{2}$ miles from town; 250 acres in cultivation. Seven-room house, large, two-story barn. Price, \$36 per acre.

24. Three hundred and twenty acres, $3\frac{1}{2}$ miles from town; good soil and water; hay meadow cuts 70 tons per year; 210 acres in crop. Price, \$33 per acre.

25. One hundred and sixty acres, $2\frac{3}{4}$ miles from town; slightly rolling, but all good, tillable land; 80 acres cultivated. Price, \$19.50 per acre.

26. Three hundred and twenty acres choice, creek land, suitable for stock raising, 9 miles from town. Price, \$20 per acre.

27. Two hundred and fifty acres, 5 miles from town; 180 in crop, good well and stock pond, frame house, all fenced, one of our best. Price, \$26 per acre.

28. Stock ranch consisting of 2,355 acres deeded land and 640 acres of school land in a body, three streams of never-failing water, three windmills and tanks, buildings suitable for handling all kind of stock, 40 miles of fence. For particulars write us.

29. Four hundred and eighty acres, 6 miles from town; well watered and all fenced. Price \$20 per acre.

30. Three hundred and twenty acres, 1 miles from town; abundance of good spring water, excellent for pasture. Price, \$16.50 per acre.

31. One hundred and sixty acres, almost adjoining town; well improved, undoubtedly the best farm in Gregory County. Price, \$52 per acre.

32. Six hundred and sixty acres, 3 miles from town; 320 acres choice cultivated land, balance pasture, all fenced, plenty of good springs. Price, \$26 per acre.

33. One hundred acres, 3 miles from town; 120 acres in crop, 40 acres pasture, plenty of water. Price, \$31 per acre.

34. Three hundred and twenty acres rough land suitable for pasture, on the Whetstone Creek. This is a snap at \$7.50 per acre. (Sold.)

35. Three hundred and twenty acres, 4 miles from town; 70 acres can be broken, balance pasture land. School section adjoining leased for four years. Price, \$3,200.

36. One thousand six hundred acre stock ranch, improved and well watered; will sell cheap or take in part payment improved farm or stock of goods. For particulars and prices write us.

37. One hundred and sixty acres, 4 miles from town; 140 acres in crop, 20 acres pasture, no waste land. A great bargain at \$29 per acre. (Sold.)

38. One hundred and sixty acres, fine farm with good well of water; 110 acres in crop, only 1½ miles from town, only \$32.50 per acre. (Sold.)

39. One hundred and sixty acres, 1 mile from town; plenty of water, frame house, 80 acres in crop. Price, \$6,000. (Sold April, 1903, \$5,900.)

A recent issue of the Sioux Falls Press, Sioux Falls, S. Dak., has this to say of the pending bill:

BURKE'S ROSEBUD BILL.

Representative Burke, of South Dakota, favors the Press with a copy of his bill for the cession of a portion of the Rosebud Indian Reservation, in this State, and his report thereon from the House Committee on Indian Affairs.

This is a measure the Press has criticised in one particular—that the price per acre to the Indian owners of the land was not enough. In Mr. Burke's new bill the price is increased from \$2.50 per acre for all the land entered within six months after the opening of the reservation, the price thereafter to be reduced to \$2.50 per acre.

It is probable that all the land to be surrendered will be taken by settlers long before the first half

year has expired, as there is nowhere in South Dakota land more desirable than in this tract. So the new bill will give the Indians a couple of hundred thousand dollars more than was contemplated in his original measure.

When the inspector visited the Indians last summer to procure their consent to the sale of the land, they demanded \$5 per acre and refused to sign in sufficient numbers an agreement for its sale for anything less than that sum.

In the absence of the agreement it was expected at that time to procure from the Indians Mr. Burke has incorporated in his bill a previous agreement made with the Indians in September, 1901, in which they then consented to the sale of the property at \$2.50 per acre. This agreement was before the last Congress, and it failed to secure ratification, the managers of the House declining to consider it.

The Indians are not at all exorbitant in their demand for \$5 per acre. The land is worth more than that. A like measure, introduced by Representative Marshall, to provide for the opening of the Devils Lake (N. Dak.) Indian Reservation, is before the House. In the Indian committee it has been so amended as to provide, that the price of the land shall be \$4.50 per acre during the first six months, \$3.50 for the second six months, and \$2.50 thereafter. The Rosebud land is even more valuable than the Devils Lake land, being in a section adapted to mixed farming.

The C.A. Johnson Realty Company, of Bonesteel and Fairfax, S. Dak., have expressed themselves regarding values, claiming grazing lands are worth \$7 and farm lands from \$25 to \$40 per acre in their section, which

is adjoining the Indian lands of the Rosebud Reservation. Their statements follow:

January 23, 1904.

Dear Sir: As it is probable that the Indian lands in Gregory County will be open to settlement soon, we are thinking of investing some money in the lands in that country.

What will the average price of farm lands be? I have a friend who would like to purchase about 3,000 acres of grazing land.

Could he get that much in a body; and if so, what would be the price?

We will inclose a stamped envelope and will be pleased to hear from you as early as convenient.

Respectfully,

C. W. Beggs, Sons & Co.

Mr. C. A. Johnson Realty Company,
Bonesteel, S. Dak.

Fairfax, S. Dak., *January 26, 1904*

Gentlemen: Your esteemed favor of January 23, 1904, has been received, and in reply will say that 3,000 acres of land for grazing purposes can be obtained here in this county for about \$7 per acre. The farm land is much more valuable and higher priced. Farm land is worth from \$25 to \$40 per acre.

The new homestead bill, which has recently been introduced by Congressman Burke, of South Dakota, provides for opening about 416,000 acres of land in that portion of this country which is yet an Indian reservation. This bill has not become a law as yet, but if it does it will provide for paying \$3 per acre for the homestead as soon as

the land is opened for entry and \$2.50 per acre if filed upon after the expiration of six months from the date the land is opened for entry. The bill also provides that after the expiration of four years from the date the land is opened for filing that a party can purchase all the land that is vacant at that time that he wishes, subject to the rules and regulations of the Department of the Interior.

Hoping to hear from you further in this matter, I beg to remain,

Yours, truly,

C. A. Johnson Realty Company,
Bonesteel and Fairfax, S. Dak.

C. W. Beggs, Sons & Co., *Chicago, Ill.*

Confirmatory of the above, the following statement of Edwin M. Starcher, of Fairfax, S. Dak., is important:

January 23, 1904.

Dear Sir: We have a party in this city who is desirous of securing about 3,000 acres of land for grazing purposes in South Dakota, and as we understand that the land in Gregory County will soon be open for settlement, we would like to know what the average price of farm lands would be in that section and also if a 3,000-acre tract could be purchased by one party.

Thanking you kindly in advance for this information and inclosing stamped envelope for a reply, we are

With respect, C. W. Beggs Sons & Co.

Mr. E. M. Starcher, *Fairfax, S. Dak.*

January 27, 1904.

Gentlemen: To your favor of 23d instant beg to say that the average price of grazing lands in this country runs from \$5 to \$10 per acre. Improved farms from \$25 to \$40 per acre.

There are no very large tracts of land that could be purchased here at this time as nearly all the land has been homesteaded or preempted by settlers and usually is owned in tracts from 40 to 320 acres. The only way one could get 3,000 acres in a body would be to buy out several of the holders who adjoin each other. If we can be of service to you in any way shall be glad to do so. No doubt we can arrange with some of the larger cattle men who own adjoining ranches to sell. Such a sale would probably range approximately \$1,000 per quarter.

Yours, truly,

Edwin M. Starcher.

C. W. Beggs Sons & Co., *Chicago, Ill.*

Rev. A. B. Clark, a missionary among these Indians for a score and more years, believes that gross injustice will be done if the Indians are forced to accept the valuation provided for by the pending legislation.

Extract from the *Valentine Democrat*, Valentine, Nebr., issue of February 4, 1904:

The agent held a grand council yesterday (Monday, February 1) with the Indians and the result was that the Indians offered to lease their unallotted land for a term of years. On former occasions the Indians positively refused to lease, but they feel so sore at the action of the South Dakota delegation in trying to open their Gregory County land at a nominal price that they consented in order that no more of their land could be opened for several years at least.

By demoralizing the Indians in the matter of leasing we see the immediate evil results that tend in the wake of attempted unfair treatment. It has been shown by those observing the conditions, and is to be inferred by all experienced in Indian life in that portion of the Northwest that it is much better to encourage the Indians to pasture their surplus lands with stock owned by themselves rather than to lease the same to outsiders.

The Indians have united upon \$5 per acre as a compromise price, although they realize that the lands are more valuable.

Can the Government afford to commit so apparent and gross an injustice?

Respectfully submitted on behalf of the Indian Rights Association.

S. M. Brosius,
Agent Indian Rights Association.

[#16]

(Legislative history of S. 3779 — the Senate companion bill to H.R. 10418, which became the Act of April 23, 1904)

[38 Cong. Rec. 268 (1904)]

Rosebud Reservation: bills to ratify agreement with Sioux Indians on (see bills S. 3779; H.R. 10418).
 ——letter of S.M. Brosius relative to proposed sale of lands in (S. Doc. 158) 1975.

[38 Cong. Rec. 71 (1904)]

S. 3779—

To ratify and amend an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation and provision to carry the same into effect.

Mr. Gamble: Committee on Indian Affairs 1100.—Reported back adversely and indefinitely postponed (see bill H.R. 10118) 1877.

[38 Cong. Rec. 1100 (1904)]

BILLS AND JOINT RESOLUTION INTRODUCED.

* * *

Mr. GAMBLE introduced a bill (S. 3779) to ratify and amend an agreement with the Sioux tribe of

Indians of the Rosebud Reservation, in South Dakota, and making appropriation and provision to carry the same into effect; which was read twice by its title, and referred to the Committee on Indian Affairs.

[38 Cong. Rec. 1877 (1904)]

Mr. GAMBLE. I am directed by the Committee on Indian Affairs, to whom was referred the bill (S. 3779) to ratify and amend an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation and provision to carry the same into effect, to report adversely thereon, and recommend that the bill be postponed indefinitely, a House bill for this purpose having been reported favorably by the same committee.

The bill was postponed indefinitely.

[#17]

(House debate concerning the Indian appropriations bill giving history of Congressional dealings w/Rosebud Sioux)

[38 Cong. Rec. 2827-2832 (1904)]

Mr. BURKE. Mr. Chairman, before proceeding to what I have risen to talk about, I want briefly to refer and supplement what the gentleman from New York, the chairman of the Committee on Indian Affairs, has said with reference to the Indian appropriation bill which is now before this committee for consideration. As was stated by the chairman, the bill has had most careful consideration by the committee, every line and every item of the bill having been considered, discussed, criticised, and scrutinized by the whole committee in a series of meetings covering some two or three weeks of time.

I wish to say, Mr. Chairman, as was stated by the chairman, that the estimates made by the Department have not been exceeded except in an amount of something like \$178,000, and the items making this increase were all recommended by the Department by either a special communication or by the head of the Bureau appearing before the committee in person. I also want to say that the increase over the estimates are all upon the item of schools. We have reduced the estimates of the Department in other respects, but have increased a little the appropriations for schools. I want particularly to emphasize this fact and to call attention to the item in the bill, which is \$3,571,198, that we appropriate for the support of the schools and the education of the Indians. Out of \$7,610,000 appro-

priated by the bill considerably more than half of it is for education.

I want also to say, Mr. Chairman, as was stated by the gentleman from Texas yesterday, that since the early history of this country we have appropriated and expended for the civilization, support, and education of the Indians of this country over \$700,000,000.

Now, Mr. Chairman, what has prompted me to ask the indulgence of this committee at this particular time grows out of the fact that recently this House passed a bill—namely, H.R. 10418—in relation to the ratification and amendment of a treaty made with the Rosebud Indians in South Dakota, by which the Indians propose to cede to the Government 416,000 acres of land. The bill I refer to was introduced in the House by myself. It was considered by the Committee on Indian Affairs, as the Indian appropriation bill was considered, in several hearings, and was considered and discussed fully in the committee, because the bill proposes what will become, if it should be enacted into law, a new policy in relation to dealing with the Indians in regard to extinguishing their title for lands which they may have in their reservations for which they have no use. In other words, if this bill should finally become a law, it will be the pioneer bill for subsequent legislation that may be proposed to be enacted upon this subject. Mr. Chairman, the bill was unanimously reported by the Committee on Indian Affairs, was taken up and considered in this House without any opposition appearing from any source, and passed, and went to the Senate.

In the Outlook of February 27, 1904, there appeared an article entitled "Indian lands and fair play."

It will be found on page 498 of the Outlook of Saturday, February 27, 1904. I am not going to take the time, Mr. Chairman, to read that article. It was

written by a gentleman of considerable reputation, one George Kennan. I believe it is well known that something like fifteen or twenty years ago Mr. Kennan went to Russia, and that he contributed a number of articles upon the subject of "The Russian exile system" that attracted some attention, and at that time made him a reputation. I also understand, Mr. Chairman, that the nature of his writings were such that he was invited out of Russia and has not been permitted to return to that country.

Since his return to the United States he has occasionally been heard from in articles condemning some policy proposed by some Department of the Government, and has invariably taken a position "agin the Government," and I understand he has very recently departed for Japan. And if he makes good his reputation of being against the country within which he may be at the time, I presume his writings will be against Japan, and we can therefore expect his early return to the United States by the invitation of the aforesaid country, as he was invited to leave Russia.

In any event, as I have said, Mr. Kennan is a man of some reputation and may have been thoroughly posted upon the subjects that he has heretofore written upon, but any man familiar with H.R. 10418 and the Indian question generally will say that when he wrote the article published in the Outlook, to which I have alluded, he demonstrated that he did not know anything about the subject. Upon that article the Outlook comments editorially as follows:

Mr. Kennan, on another page, gives a dispassionate and striking account of the latest attempt to rob the Indian wards of the nation. While this robbery was undoubtedly instigated and planned in South Dakota, unfortunately Congress and the

Interior Department were made—although perhaps unconsciously—accomplices before the fact. We may, perhaps, venture to say that this piece of gross injustice to the Indians was brought to the attention of the President through the instrumentality of the Outlook, and owing to its personal indignation at the mean bargain the swindle has been blocked.

It is fair, on the one hand, to say that the Secretary of the Interior and the Indian Commissioners are personally not in the slightest degree involved in the proposed corrupt sale, but that they have yielded to the political pressure which is so constantly brought to bear upon administrative officials by members of the legislative branch of the Government.

Then it goes on (I will quote the whole article) and says further:

But, on the other hand, it should be remembered that the Indian Commissioner and the Secretary of the Interior are put in their respective places to do exactly the things they have not done in this case, to advise with regard to legislation as experts and to block, in so far as they can, legislation which is either dishonorable or unwise, as it may touch their own Departments, etc.

I do not wish to comment specially upon that last paragraph which I have read, but I do not think any man in the House of Representatives will say that it is the duty or the province of any Department to interfere with legislation that Congress might conclude to enact into law simply because the Department might deem it unwise and undesirable.

The editorial concludes as follows:

For them to plead, as in this case they have done, that they approved bills regarding the

Indians which they deemed not only to be unwise, but unjust, and possibly even dishonest, because of political pressure, is like saying that nobody is to blame for the explosion of the boiler because the metal was not strong enough to resist a steam pressure which the boiler had been expressly manufactured to resist.

Following that article, the Indian Rights Association, an organization, I believe, existing in Philadelphia, a self-appointed guardian of the rights of the Indian, supported, I presume, largely by the contributions of people who may be actuated by sentimental motives, and who are ready to believe that the poor Indian is being robbed and is being outraged by the white man and by the General Government, issued a pamphlet signed by Mr. Phillip C. Garrett, president of the Indian Rights Association, dated Philadelphia, February 29, 1904, and headed "Another Century of Dishonor." I will only read the first paragraph of this pamphlet, which is as follows:

We appeal for justice on behalf of the Rosebud Indians of South Dakota, and insist that the Government, in taking their land without their consent in the capacity of guardian and under the guise of the law, shall not confiscate, three-fourths of its value, but should provide that the Indian owners receive reasonable compensation therefor.

Now, Mr. Chairman, one word in relation to the inconsistency of this Indian Rights Association. I find that about ten years ago a treaty was entered into between the Lower Brulé Indians and the Rosebud Indians in South Dakota by which the Lower Brulé Indians, or a portion of them, were to move onto the Rosebud Reservation. It was mutually agreed to by the Indians. It was desired and recommended by the De-

partment, but the Indian Rights Association protested and opposed that proposition on the ground that the land south of the White River, this particular reservation, was practically valueless, and yet in the pamphlet which they have now sent to many if not all the Members of the House they are trying to make it appear that this land is very valuable and that we are taking it away from the Indians at a price that is unreasonable and unfair.

Mr. Chairman, just a word as to why it was necessary to adopt a new policy in relation to extinguishing Indian title or right of occupancy in reservation lands that were no longer of any use to the Indians, and why it was that the treaty, made with the Rosebud Indians for the cession of that portion of their reservation located in Gregory County, was not ratified by Congress.

Heretofore it has been the policy to enter into a treaty with Indians, the Government stipulating and agreeing to pay in cash a certain price for the land to the Indians. Upon the ratification of a treaty, the land became a part of the public domain, and was disposed of under the homestead laws. It appeared that in many of these treaties a price was paid that was in excess of what the land was actually worth and that instead of the Indians being mistreated it was the Government that was being imposed upon, and it was declared by those in this House who are its leaders that hereafter no Indian reservations could be opened to settlement except on some plan by which the Government would not be obligated to pay the Indian for his right therein, but upon some terms by which the land would be disposed of by the Government and the proceeds paid to the Indians. In the language of our present distinguished Speaker, on the floor of the House in the Fifty-sixth

Congress, "When white man pays his money, Indian gets his money."

It was for the reasons stated that it became necessary to adopt the plan proposed in House bill No. 10418, and what the Indian Rights Association is condemning, and these other theorists and doctrinaires, is that it is not good faith, first, because it violates treaty stipulations heretofore made with the Indians and, secondly, the terms of the bill are not fair and just to the Indians.

In 1901 a treaty was made with the Rosebud Indians, signed by more than three-fourths of the male adult Indians, by which they agreed to cede to the United States 416,000 acres of their reservation, being that portion located in Gregory County. The United States in that treaty stipulated to pay to the Indians \$2.50 an acre for that land, or, in round numbers, \$1,040,000. When that treaty came to the House of Representatives it met with the opposition which I have just stated, and it became necessary, as I say, to find some other way by which the Indians might dispose of this land and the lands could become a part of the public domain and be occupied, settled upon, cultivated, and improved and made useful instead of lying there of no value to the Indians, without being used by anybody, unless it might be by some trespasser.

In the meantime the Supreme Court of the United States, in the case of Lone Wolf against Hitchcock, decided January 2, 1903, a case where the conditions, so far as the provisions of former treaties were concerned, were exactly identical. Article 12 of the treaty with the Kiowa and Comanche Indians was exactly the same as article 12 with the Sioux Indians in the treaty of 1868 and reaffirmed in the treaty of 1889, by which it was expressly provided that the Indians in the future

would not be deprived of any of their reservation lands except upon the consent and approval of three-quarters of the male adults. The Supreme Court, in the case just referred to, Congress having amended a treaty which had been made with the Indians, took up that question and decided it squarely, and perhaps for the first time in the history of the Government. They decided that Congress had the absolute right to legislate with the Indians and for the Indians as the Congress in its judgment might see fit, regardless of any treaty conditions or treaty stipulations that might have been entered into in the past, and that decision became the law and furnished an opportunity to enact legislation such as the present Rosebud bill does provide, if it is enacted, and we therefore proceeded to amend that treaty so that as the lands were disposed of the money should go into the Treasury and be paid out to the Indians.

The Indian Rights Association, that are protesting against this bill, and others who have been heard from in opposition to the same, do not say or make any reference to the fact that a treaty embodying substantially the provisions of this bill as it is at present, except that the price of the land was 50 cents an acre lower, was submitted to the Rosebud Indians last August, and the price of \$2.50 an acre was raised to \$2.75, and that forty-eight more than a majority of the Indians consented and approved of the same. So that, while not three-quarters, as the treaty provides, forty-eight more than a majority have said that they desired and were willing to sell the land upon the terms proposed, and for \$2.75 per acre, whereas the price they will receive if the bill becomes a law is \$3.00 per acre.

Now, just a word as to the policy which we have been pursuing so far as the Indian is concerned and his right to the reservations which they occupy. In the Fifty-sixth Congress there was a gentleman, a Member of the House, distinguished for long years of service, a man who was in every respect a statesman, a man who had made a study of the subject of the public domain, and on February 4, 1901, he spoke the words which I will now read. I want to say that I indorse what the gentleman said, and that I believe the law absolutely sustains the theory which he there sets forth. I quote, Mr. Chairman, from Hon. Galusha A. Grow, of Pennsylvania, as follows:

Mr. Grow. Mr. Speaker. I agree in part with the remarks made by the gentleman from Georgia [Mr. Maddox]. But the land that the Indian claims as his own has no property value unless it is cultivated. The basis of the free-homestead law that passed Congress was that the wild, uncultivated lands of the wilderness belonged to the man whose industry made it valuable to civilization by his labor. His title to ownership in such land is sealed in the sweat of his face as it moistened the soil he tilled. What right can these Indians or Indians anywhere have to land without cultivation? Running over lands with a bow and arrow or fishing rod does not give a man a title to land uncultivated and improved.

I am opposed to the whole policy of the Government that treats the Indian as the owner in fee of uncultivated land. How can he have more than a possession title simply by making moccasin tracks over it, with his bow and arrow. The Indian has no more right than a white man to the soil because he tramps over it. If he has, the agents of the Hudson Bay Company are just as much en-

titled to the great wilderness of the Northwest. They traversed it with shotgun and fishing rod and all the implements of a hunter's life as early as the Indian, or at the same time.

Why should the Government make a treaty with the Indian to buy his land, to which he has only possessionary title? The old policy was to make an arrangement for him to leave his present occupancy and to find a new home. It is well enough that the Government should make such arrangement with him. He leaves his old hunting ground and finds another. All the attachments he severs is the graves of his ancestors. But immigrating people do that all over the world. The sons born in New England to-day go forth and find new homes in the West, and stop only when they reach the shores of the mighty ocean.

This Government's policy inflicts a wrong on the Treasury of the United States in treating the Indian as owning in fee land which neither he nor the white man has any just title to without they apply labor to it in cultivation.

The Government should return to the old policy practiced for fifty years, paying the Indian tribes for moving from one place to another if his land is wanted for settlement. No matter what the Government pays for his consent to move, it is better than expelling him by shot and shell. But until he acquires the exclusive right to the soil by cultivation he has no property right to sell to anybody. The earth's surface, created by the Almighty for the support of the race, becomes individual property only by the application of man's labor in its cultivation.

Mr. Chairman, the theory that the Indian absolutely owns these reservations is nothing but a theory, and the sooner that Congress appreciates that this is the case

the better legislation, in my judgment, we can have for the best interests of the Indians. I find that in the earlier treaties made with the Indians it was never thought that the Indian owned the lands. He had a sort of aboriginal tenure, as it is termed—a mere right of occupancy.

I have been told that in Pennsylvania, the State where the Indian Rights Association makes its home, there was a treaty entered into with the Indians in the early history of that State by which the Indians ceded and surrendered quite a portion of lands which they occupied at a cost of \$5.28, which was expended for beads.

Mr. Chairman, we are told that the Indians own the land. I shall incorporate in my speech and put in the Record several decisions from the Supreme Court of the United States, which demonstrate beyond any question that all the Indian has in the reservation is a mere right of occupancy, and that he has no title and that the fee is in the Government, and that it and it alone can extinguish the Indian right of occupancy, upon such terms as Congress may determine.

At this point I desire to refer to the case of *Lone Wolf v. Hitchcock*, heretofore cited. A portion of said opinion I will append to my remarks and print in the Record.

I want to call particular attention to the language used in this opinion in relation to the Indian right of occupancy being as sacred as the right of the fee in the United States, and, referring to several decisions where it was so decided, the court says that in none of these cases was there a controversy between Indians and the Government, but the questions considered had relation to the nature of the property rights of the Indian, concerning the character and extent of such rights of

the Indian, concerning the character and extent of such rights as respected States or individuals.

I desire to refer to the cases of *Johnson v. McIntosh*, 8 Wheaton, 543, decided in 1823; *United States v. Cook*, 19 Wallace, 591, decided in 1873; *Buttz v. Northern Pacific Railroad*, 119 U.S., 55; *Beecher v. Wetherby*, 95 U.S., 517, and I will append and print in the Record extracts from these decisions and also an extract from an opinion by Attorney-General Cushing, 8 Opinions Attorney-General, 255, and I would emphasize one portion of this opinion and commend it to some of the Eastern States that are so inclined to be sentimental on the Indian question and fearful that he will not be justly treated. The language is as follows:

Finally, we of the older States of the Union, who had expelled or killed off most of our Indians or reduced them to a condition of hopeless pupillage, had now come to be extremely sensitive to the alleged wrongs of the same nature—that is, policy in imitation of ours—to which the younger States of the South were now subjecting their Indians.

From the opinions cited, and especially the decision in the *Lone Wolf* case, it is demonstrated clearly that the Indian is a ward of the nation and that the United States can legislate as the legislative branch may see fit for his best interests.

It has been claimed that this particular bill is a robbery, and it has been so denominated. I want to say that it provides that the land shall be opened to settlement and what is disposed of during the first six months shall be paid for at the rate of \$3 per acre. In this tract there are 452 tracts that have already been selected by the Indians as allotments. In other words, the Indians have gone first and selected as their allot-

ment one-fifth of the tract: and the Indians are just like white men—they have naturally selected the best tracts. That would be natural. So that the 416,000 acres represents only four-fifths of the tract that is located in Gregory County, a part of this reservation. On the north the land is joined by what was formerly a part of the great Sioux Reservation, where land is now open to settlement and can be had, if a man will go there and live on it for five years, for nothing; and if he commutes, he pays only 50 cents an acre. It is joined on the south by land in Nebraska, assessed at between \$1 and \$1.25 an acre. On the west is an Indian reservation extending 170 miles.

And I maintain that when we put the price at \$3 an acre, as we do in that bill, it is not only fair and just, but it is more, Mr. Chairman, in my judgment, than the land is worth to-day, and certainly as much as a man ought to be required to pay who goes there and is required to comply with the provisions of the homestead law, as he will have to do under the terms of this bill. I maintain, Mr. Chairman, that the only question to be determined is the price of the land, and that that is one entirely of judgment, and that in looking out for the interests of the Indians if we see to it that he gets as much as he would have gotten under the treaty which he made we certainly can not be accused of having mistreated him. It is the judgment of every man familiar with the conditions in that section of the country that the land will be disposed of under the provisions and terms of this bill, and that it will be paid for, and that the Indians will receive as much money as they would have received under the original treaty, and probably more.

Mr. Chairman, I want to refer to a treaty made with the Sioux Indians in 1868, and I want to read some of

the provisions. In article 11 of this agreement it appears that we paid the Indians a consideration, and here are some of the things that the Indians agreed to do:

They agreed to withdraw all opposition to the construction of railroads now being built on the plains. "Second, that they will permit the peaceful construction of any railroad in passing over their reservation as herein defined." "That they will not attack any persons at home or traveling, nor molest or disturb any wagon trains, coaches, mules, or cattle belonging to the people of the United States or to persons friendly therewith." "They will never capture or carry off from settlements white women or children; they will never kill or scalp white man, nor attempt to do them harm."

By article 2 of the treaty of 1877 it is provided: "They also consent and agree to the free navigation of the Missouri River."

Now, to say at this time because some years ago the United States, in order to control these then outlaws and savages—call them by any name you may—confined them within certain limits, which were called "reservations," that we gave them the lands seems to me absurd. Will anybody for a moment contend that that action was a conveyance for a consideration to the Indians of the fee in the land? I certainly think not, and, as I said before, I have cited some authorities showing that the reservation title, if you want to so term it, is of no greater value than the aboriginal tenure. Yet it is contended that these lands now belong to the Indians and that they should be disposed of not only for what they are worth in their present almost valueless, useless condition, but that they shall be sold so that the Indian will get what they are worth after they have been cultivated and improved and made valuable by the white man.

I say, Mr. Chairman, following the language of the distinguished gentleman from Pennsylvania [Mr. Grow], from whom I have quoted, that the value in this land should go to the man that gives it value. The Indians of this country have never contributed or done anything that has been recognized by which they have given any value to the lands of this country. These Indians have the right to take: Heads of families, 320 acres of land; children over 18 years of age, 80 acres of land.

Heads of families who desire to live on their allotments are entitled to the following: Fifty dollars in lieu of a house, two mares and one colt, two cows with calves, one farm wagon, one set double harness, one plow, one hoe, one ax.

I cite this simply to show how generously the Indian has and is being treated by the Government, and I have no hesitancy in saying that after having taken allotments as they have in the tract affected by the proposed bill, the land left, which is of no value as it is now, should be made a part of the public domain, and upon terms not only fair to the Indian, but upon terms fair and just to the man who may go there to make his home and cultivate it. The man who goes into that section of the country goes in there with a handicap of one-fifth of the land nontaxable for twenty-five years, and he has got to pay his proportionate increase of the expenses of that community for all that time.

These 452 Indian allotments are practically without value at present, whereas if the adjoining lands are settled upon and improved it will make them valuable, and they can also be rented so as to give the allotments a benefit; and this is a consideration of considerable importance to the Indians having the aforesaid allotments.

I wish to emphasize that in disposing of this land it is not proposed to sell anything more than the right to make a homestead entry, which is quite different from what it would be if a person could buy the land outright. Under the provisions of the homestead law the purchaser will be limited to 160 acres and will have to reside upon and cultivate the land, in accordance with the provisions of said law.

That the Department has always considered \$2.50 an acre, or \$1,040,000, a fair and just price for the land, I wish to read the following reports.

Commissioner Jones, in his report to the Secretary of the Interior on the original treaty, November 23, 1901, in which he recommended that the same be transmitted to Congress with the request for favorable action, among other things said, referring to the report of the inspector who made the agreement:

The inspector states that the land in Gregory County is without doubt the best and most desirable portion of the Rosebud Reservation, and that although the allotments embrace much of the choicest land, yet a great deal of good land remains unallotted. The whole tract, he says, is excellent grazing land, and the greater portion is also good agricultural land, upon which excellent crops can be raised when there is sufficient rainfall during the growing season. He says he regards, the compensation stipulated in the agreement as very reasonable and at the same time a fair and just price for the lands. * * *

In conclusion the inspector states that he regards the compensation and manner of payment provided in the agreement as just and fair, both to the Indians and to the United States; that the manner of payment was the best, both for the Indians and for the Government, that the Indians

would accept; that the stock cattle and the five annual cash payments will be of great benefit to the Indians in giving them a good start toward their self-support. He heartily recommends the approval and ratification of the agreement.

The Commissioner further said:

The compensation agreed upon for the land ceded, amounting to about \$2.50 per acre, is, in the judgment of this office and from the best information obtainable, fair and reasonable.

The Secretary of the Interior, under date of December 6, 1901, in transmitting the treaty to the Senate, stated:

This agreement has been carefully considered by the Commissioner of Indian Affairs, and as it seems fair and reasonable and the terms the best that could be obtained I have the honor to recommend that it receive favorable action by the Congress.

A gentleman of high standing, and a man who has been among the Indians for thirty years or more, and who was at first opposed to House bill No. 10418, after having it explained wrote me a letter, from which I quote as follows:

Philadelphia, Pa., *February 12, 1904.*

However, the material questions are: Is the proposed bill (H.R. 10418) on the whole beneficial, and are its terms the best which can be got? On the whole, I answer "Yes," changing my opinion on these points, as you will perceive. I base this change of opinion—

First, upon the fact, to which you draw my attention and which I had overlooked, that the proposed bill assures the presence on the pur-

chased land of a white farming population under the homestead laws instead of the purchase of the land in large grazing tracts by capitalists; and,

Second, upon the fact that, upon reflection, I think the prompt sale of the land more probable than when I wrote you.

I shall abstain, therefore, from any public criticism of the bill unless new considerations present themselves to my mind and seem to demand it, in which case I shall again put myself in communication with you.

I also wish to read two letters from one Frank Mullen, who has lived upon the Rosebud Reservation for twenty-four years, and is therefore familiar with the conditions upon said reservation, and is known to be a friend of the Indians, which letters are as follows:

Rosebud Agency, S. Dak.,
January 23, 1904.

Hon. Charles H. Burke, *Washington, D.C.*

Dear Sir: Will you kindly send me a copy of the new bill introduced by you in the House of Representatives for the opening of the unallotted lands in Gregory County.

We hope your splendid efforts for the bill will be successful this session, and that the Indians will get the money they have been expecting from the sale for the last two years, and a payment of account, this fall.

We have almost daily inquiries in reference to the bill, and I would consider it a favor if you would keep me advised of its progress, so that I can keep our people informed through our little paper.

I understand there have been some protests sent from here to the Committee on Indian Affairs. If this is so, they are unauthorized by any council of

Indians, from which they probably purport to emanate, and represent only a small minority of the Indians. The general sentiment is in favor of the bill, as outlined in the press dispatches, and the main question of the Indian is "When do we get the money, and how much?"

Yours, truly,

Frank Mullen.

Rosebud, S. Dak.,
February 2, 1904.

Hon. Charles H. Burke, Washington, D.C.

My Dear Sir: Referring to your letter of January 27, I would say that I have been perfectly familiar with the lands in Gregory County for the last twenty-four years, and have no hesitancy in saying that the price established in your bill now before the House of Representatives is fair and reasonable, and in my judgment all that the land as a whole is worth. Your bill exactly embodies my suggestion to Colonel McLaughlin, when here last, to increase the price named in the original agreement to \$3 per acre, in order that the Indians would realize the aggregate amount of \$1,000,040, as therein provided. This, in my judgment, your bill will more than accomplish; in fact I consider it the best proposition for the Indians which has been before the House.

You are undoubtedly aware of the cause of opposition here, and I am free to say that, in my opinion, there would not have been any opposition to amount to anything to Colonel McLaughlin's last agreement had the Indians not been persistently told that by holding out they would surely obtain \$5 per acre.

As a business proposition, I consider the Indians gain by the sale of the land, as it is of absolutely no benefit to the large majority, and that those whose allotments are in Gregory County gain more than any of the others by the increased value of their allotments.

Very truly yours,

Frank Mullen.

As to the benefits that the Indians will receive from the sale of this land and the amount of money they will receive per capita, Inspector McLaughlin, who negotiated the treaty with these Indians, in one of the councils said to the Indians:

The census rolls show 4,917 persons belonging to this agency, which would give an annual per capita allowance of \$30.50; that is, \$30.50 once a year to each man, woman, and child for a period of five years, aggregating \$152.50 that each man, woman, and child would receive in the five years.

At the expiration of five years, when this per capita payment would end, the matured increase derived from your stock cattle would then be marketable and continue to furnish a large number of beef cattle annually thereafter, which would place you upon an independent footing, and with proper care of your cattle would insure you a regular annual income. * * * Then the stock cattle, which, if properly cared for, will bring about a great deal of prosperity among you people. And in the third place, the cash payment for five years, which would enable you to take care of your families without any suffering until you begin to receive returns from the marketable cattle, the increase of the cattle that will be issued to you.

The Indians will have the benefit of the roads, of the courts, and the benefits of a county and State government without contributing a cent therefor, their lands

being nontaxable for twenty-five years, as before stated, while the settler who takes a homestead and acquires title to the same must do his share in paying these expenses.

Talk about robbery and that these Sioux Indians are not being fairly treated. Under the treaties of 1868, 1877, and 1889 they have drawn from the Treasury of the United States the sum of \$55,265,735.34. This is the amount obtained by about 20,000 Indians. Now, if you should contribute that amount of money to a similar number of white people and let them understand that they are going to be clothed and fed and educated and that they are going to have houses provided for them, the effect would be that you would simply make paupers of them. As soon as this Government comes to a realization that this is not a question of sentiment but a question of practical business, the Indians will commence to make some progress similar to that which has already been accomplished by what I consider an advanced policy.

Under the present administration of Indian affairs the idea of self-support is encouraged. If the Indian is able to work—if he is able-bodied—the Indian Office says to him: "If you want to eat you must work." They provide payment for the services of the Indian in building roads, ditches, fences, etc., and pay him money in lieu of rations. In other words, they give him to understand that he must help himself.

I want to put in the Record, that it may receive the special attention of the House, the gross amount of the several items to which I have referred. It will be found very interesting reading. For instance, under article 10 of the treaty of 1868 there is provided for "Indians roaming," \$5,464,400.

In order that it may appear just what this item means, I will read the provision of article 10 of the treaty authorizing and requiring payments to be made. It is as follows:

And in addition to the clothing herein named, the sum of \$10 for each person entitled to the beneficial effects of this treaty shall be annually appropriated for a period of thirty years while such persons roam and hunt, and \$20 for each person who engages in farming, to be used by the Secretary of the Interior in the purchase of such articles as from time to time the condition and necessities of the Indians may indicate to be proper.

Appropriations for Sioux under treaties of 1868, 1877, and 1889, to and including 1904.

Article 7, treaty 1868, education	\$2,180,000.00
Article 8, treaty 1868, seeds . . .	94,000.00
Article 10, treaty 1868, clothing .	4,110,500.00
Article 10, treaty 1868, Indians roaming	5,464,400.00
Articles 8 and 13, treaty 1868, employees	1,421,900.00
Article 10, treaty 1868, cows and oxen	126,000.00
Article 10, treaty 1868, article 5, agreement 1877, subsistence and civilization	36,122,500.00
Article 14, treaty 1868, presents .	1,500.00
	<hr/> 49,520,800.00
Section 17, act 1889, permanent fund	3,000,000.00
Section 7, act 1889, Santees . . .	45,000.00
Section 17, benefits to allottees .	1,243,685.34
Miscellaneous for thirty years . .	<hr/> 1,456,300.00
Total	55,265,735.34
March 2, 1904.	

Mr. Chairman, I regret very much that I have been limited in time as I have been. I wanted to bring to the attention of the House a number of matters which under the circumstances I shall be compelled to put into the Record. I commend them to Members of this House.

I think the time has come, as I before stated, when we should legislate not only for the purpose of taking from the Indians the lands which they do not require, which were set aside for them originally for hunting and fishing, but also adopt a different policy in other respects, as we are already doing to some extent, in appropriating money for the support and maintenance of the Indians.

Why, Mr. Chairman, to give the Indian all the money that can possibly be realized from some land in which he may have some interest is not for his benefit. He simply squanders the money which he thus receives; it does him no good, except in a few instances. You will generally find that the opposition displayed to legislation which is for the interest of the Indians comes from somebody interested in having the Indians obtain just as much money as possible, because the person is desirous of the Indian getting as much money as possible in order that he may get it from him.

To this bill there never would have been any opposition to speak of on the part of the Indians had it not been for the agitation of certain white men residing upon or adjacent to the reservation, who had a selfish interest in the reservation remaining in its present state, possibly to enable them to range their cattle free over the lands and be permitted to continue trespassing.

In conclusion, Mr. Chairman, I maintain that the surplus land of an Indian reservation, for which the Indian has no further use, is not the property of the

Indians, at least to no greater extent than it belongs to the whole people, and I maintain that the most that the Indian has is a mere right of use originally accorded him for the purpose of hunting and fishing, and that he should be obliged, upon such terms as are just and fair, to surrender it, that it may become a part of the public domain and be converted into homes and farms and occupied by people who will contribute to the development and material advancement of the country, and I therefore submit that there is no justification for the opposition that has developed against the Rosebud bill, and that it is a measure that proposes to generously pay the Indians for their right to the lands, and I therefore hope that it may be enacted into law. [Applause.]

Mr. Chairman, I desire to extend my remarks in the Record and append some authorities bearing upon the subject of Indian titles, and will ask to have the same printed.

APPENDIX

In the case of *Fletcher v. Peck* (6 Cranch, 87), decided by the Supreme Court of the United States in 1810, referring to the grant of lands within an Indian reservation, the court said:

"The reservation for the use of the Indians appears to be a temporary arrangement, suspending for a time the settlement of the country reserved."

In the case of *Johnson v. McIntosh* (8 Wheaton, 543), decided in 1823, it was decided that the fee to all Indian lands is in the Government and may be granted subject to the transient usufructuary right of the aboriginal occupants, and this doctrine is followed in the case of *United States v. Cook* (19 Wall., 591), decided in 1873, in which case certain Indians cut and disposed of

certain timber from an Indian reservation, and the Government brought suit to recover from the purchaser, Cook, the value of the timber, the theory being that the felling of the timber was an injury to the reversion of the United States. The question being squarely presented as to whether the fee was in the Government, the court sustained this view. Chief Justice Waite thus stating the doctrine considered applicable, as follows:

"The right of the Indians in the land from which the logs were taken was that of occupancy alone. They had no power of alienation, except to the United States. The fee was in the United States, subject only to this right of occupancy. This is the title by which other Indians hold their lands. It was so decided by this court as early as 1823 in *Johnson v McIntosh*. The authority of that case has never been doubted. The right of the Indians to their occupancy is as sacred as that of the United States to the fee, but it is only a right of occupancy. The possession, when abandoned by the Indians, attaches itself to the fee without further grant." * * *

In *Buttz v. Northern Pacific Railroad* (119 U.S., 55), the railroad company claimed under the grant conveying certain sections along the lines of its projected route, which at the date of the grant was within an Indian reservation, and the Indian title not extinguished for some years later, the court said:

"The land in controversy and other lands in Dakota, through which the Northern Pacific Railroad was to be constructed, were within what is known as 'Indian country.' At the time the act of July 2, 1864, was passed the title of the Indian tribes was not extinguished. But that fact did not prevent the grant of Congress from operating to pass the fee of the land to the company. The

Indians had merely a right of occupancy—a right to use the land subject to the dominion and control of the Government. The grant conveyed the fee subject to this right of occupancy. The railroad company took the property with this incumbrance."

In the case of *Beecher v. Wetherby* (95 U.S., 517), the question presented was whether or not the State took title under the school grant for lands within an Indian preservation, or whether the title remained in the United States subject to be otherwise disposed of by some arrangement with the Indians. The decision of the court was that the title of the State attached, notwithstanding the right of occupancy, and that an attempt by the United States to sell the school sections for the benefit of the Indians was void, and the court said:

"The right which the Indians held was only that of occupancy. The fee was in the United States, subject to that right, and could be transferred by them whenever they chose. The grantee, it is true, would take only the naked fee and could not disturb the occupancy of the Indians, that occupancy could only be interfered with or determined by the United States. * * *

"The right of the United States to dispose of the fee of the lands occupied by them (Indians) has always been recognized by this court from the foundation of the Government. It was so ruled in *Johnson v. McIntosh* (8 Wheaton, 543), in 1823, and in *United States v. Cook* (19 Wall., 591), in 1873. Other cases between those periods have affirmed the same doctrine. *Clark v. Smith* (13 Peters, 125). See also *Jackson v. Hudson* (3 Johnson, 375); *Veeder et al. v. Guppy* (3 Wisconsin, 502), 8 Opinions Attorney-General. pp. 262, 264. In

United States v. Cook (19 Wall., 591), the United States maintained replevin for timber cut and sold by Indians on land reserved to them, the court observing that the fee was in the United States and only a right of occupancy in the Indians; that this was the title by which other Indians held their land, and that the authority of *Johnson v. * * **

"In the construction of grants supposed to embrace lands in the occupation of Indians questions have arisen whether Congress intended to transfer the fee or otherwise, but the power of the United States to make such transfer has in no instance been denied. In the present case there can hardly be a doubt that Congress intended to vest in the State the fee to section 18 in every township, subject, it is true, as in all other cases of grants of public lands, to the existing occupancy of the Indians so long as that occupancy should continue. The greater part of the State was, at the date of the compact, occupied by different tribes, and the grant of sections in other portions would be of comparatively little value. Congress undoubtedly expected that at no distant day the State would be settled by white people, and the semibarbarous condition of the Indian tribes would give place to the higher civilization of our race; and it contemplated by its benefactions to carry out in that State, as in other States, 'its ancient and honored policy' of devoting the central section in every township for the education of the people." (See also *Cooper v. Roberts*, 18 How., 173.)

Attorney-General Cushing (8 Opins. Atty. Gen., 255), in the Portage City case, in relation to whether the act of Congress approved August 6, 1846, affected certain lands within an Indian reservation, used the following language:

"There was a time when the true relation of the Indians to the United States was not so clearly seen as it now is. We have been accustomed to make treaties with them as if they were independent of us; that was an error. We dealt with their petty tribes as nominal nations; that led to strange misconceptions. We had spoken of their lands—as if a handful of savages who happened to be within the geographical limits of country large enough for an empire could be deemed its proprietors in virtue of any rule of natural right or of positive law. We had respected their assumed rights; that is, had left them to their savage quasi independence, instead of by force compelling them to enter into some appropriate place in the social organization, and thus they had perished of too much liberty. Finally, we of the older States of the Union, who had expelled or killed off most of our Indians or reduced them to a condition of hopeless pupillage, had now come to be extremely sensitive to the alleged wrongs of the same nature; that is, policy in imitation of ours, to which the younger States of the South were now subjecting their Indians.

"The elaborate investigation of the subject which ensued cleared off all these errors, and discussion ended with the great cases of the *Cherokee Nation v. The State of Georgia* (5 Peters, 1), and *Worcester v. The State of Georgia* (6 Peters, 515).

"It is the universal doctrine of public law that the Indians are the domestic subjects of the particular European-American state in which they happen to be. (*Cherokee Nation v. The State of Georgia*, 5 Peters, 1.) It is a doctrine of our public law equally fundamental that the Indians do not hold a fee in the lands of their aboriginal occupation, but only a usufruct, the fee being in the United States or, in some cases, in the several

States. (*Johnson v. McIntosh*, 8 Wheaton, 643; *Fletcher v. Peck*, 6 Cranch, 89.)

"When the United States made this grant to the State of Wisconsin the fee of all the land was in the United States, subject, in respect of a part, to the occupancy of the Menomonees. That usufructuary occupation was capable of being extinguished by the United States, and by them alone, and until its extinction the entire original title remained between them and the Indians. * * *

"In the case of *Mitchell v. The United States* that was one of the points, and it was expressly held by the court as the established public law of America that the Government owns the original fee of the soil, and may grant the same while the lands remain in the possession of the Indians. (9 Peters, 711.)

"The same doctrine is reaffirmed in the case of *The United States v. Fernandez*. (10 Peters, 303.)

"There is no room whatever to question the law of these decisions. They are in strict conformity with principle and precedent."

Mr. SHERMAN. Mr. Chairman, I want to state what I understand to be the Indian title to the lands which have been referred to, because I am fearful that an erroneous impression may have been left upon the minds of some Members by the statements of the gentleman from South Dakota [Mr. Burke].

The Supreme Court more than seventy-five years ago declared that the right of the Indian was a right of occupancy, a right of use, a right which was perpetual, and could be interfered with or changed only upon the assent of the Indians. The Supreme Court recently have modified that decision to the extent of saying that the Congress of the United States occupied the position of a guardian for the Indians, a guardian that could act

without asking the assent of any court, a guardian supreme in its powers, but whose powers must be exercised solely for the benefit of the ward. In other words, the Supreme Court now holds that while the title of the Indians is a title simply of use and occupancy for their benefit, Congress can dispose of that title if it sees best, if in its wisdom it thinks it is for the benefit of the Indians to do, but can do that only for the benefit of the Indians and for no other purpose.

Mr. BURKE. Will the gentleman permit one observation?

Mr. SHERMAN. Yes.

Mr. BURKE. I desire to call the gentleman's attention to the fact that in the case of *Lone Wolf v. Hitchcock*, decided January 2, 1903, after quoting article 12 of the treaty, Mr. Justice White, who delivered the opinion of the court, said in part:

The appellants base their right to relief on the proposition that by the effect of the article just quoted the confederated tribes of Kiowas, Comanches, and Apaches were vested with an interest in the lands held in common within the reservation, which interest could not be divested by Congress in any other mode than that specified in the said twelfth article, and that as a result of the said stipulation the interest of the Indians in the common lands fell within the protection of the fifth amendment to the Constitution of the United States, and such interest, indirectly at least, came under the control of the judicial branch of the Government. We are unable to yield our assent to this view.

The contention in effect ignores the status of the contracting Indians and the relation of dependency they bore and continue to bear toward the Government of the United States. To uphold the

claim would be to adjudge that the indirect operation of the treaty was to materially limit and qualify the controlling authority of Congress in respect to the care and protection of the Indians, and to deprive Congress, in a possible emergency when the necessity might be urgent for a partition and disposal of the tribal lands, of all power to act if the assent of the Indians could not be obtained.

Now, it is true that in decisions of this court the Indian right of occupancy of tribal lands, whether declared in a treaty or otherwise created, has been stated to be sacred, or, as sometimes expressed, as sacred as the fee of the United States in the same lands. (*Johnson v. McIntosh* (1823), 8 Wheat., 543, 574; *Cherokee Nation v. Georgia* (1831), 5 Pet., 1, 48; *Worcester v. Georgia* (1832), 6 Pet., 515, 581; *United States v. Cook* (1873); 19 Wall., 591, 592; *Leavenworth, etc., R. R. Co. v. United States* (1875), 92 U.S. 733, 755; *Beecher v. Wetherby* (1877), 95 U.S., 525.)

But in none of these cases was there involved a controversy between Indians and the Government respecting the power of Congress to administer the property of the Indians. The questions considered in the cases referred to, which either directly or indirectly had relation to the nature of the property rights of the Indians, concerned the character and extent of such rights as respected States or individuals. In one of the cited cases it was clearly pointed out that Congress possessed a paramount power over the property of the Indians, by reason of its exercise of guardianship over their interests, and that such authority might be implied, even though opposed to the strict letter of a treaty with the Indians. Thus, in *Beecher v. Wetherby* (95 U.S., 525), discussing the claim that there had been a prior reservation of land by treaty to the

use of a certain tribe of Indians, the court said (p. 525):

"But the right which the Indians held was only that of occupancy. The fee was in the United States, subject to that right, and could be transferred by them whenever they chose. The grantee, it is true, would take only the naked fee, and could not disturb the occupancy of the Indians; that occupancy could only be interfered with or determined by the United States. It is to be presumed that in this matter the United States would be governed by such considerations of justice as would control a Christian people in their treatment of an ignorant and dependent race. Be that as it may, the propriety or justice of their action toward the Indians with respect to their lands is a question of governmental policy, and is not a matter open to discussion in a controversy between third parties, neither of whom derives title from the Indians."

Plenary authority over the tribal relations of the Indians has been exercised by Congress from the beginning, and the power has always been deemed a political one, not subject to be controlled by the judicial department of the Government. Until the year 1871 the policy was pursued of dealing with the Indian tribes by means of treaties, and, of course, a moral obligation rested upon Congress to act in good faith in performing the stipulations entered into on its behalf. But, as treaties made with foreign nations (*Chinese exclusion cases*, 130 U.S., 581, 600), the legislative power might pass laws in conflict with treaties made with the Indians. (*Thomas v. Gay*, 169 U.S. 264, 270; *Ward v. Race Horse*, 163 U.S., 504, 511; *Spalding v. Chandler*, 160 U.S., 394, 405; *Missouri, Kansas*

and *Texas Rwy. Co. v. Roberts*, 152 U.S., 114, 117; *The Cherokee Tobacco*, 11 Wall., 616.)

The power exists to abrogate the provisions of an Indian treaty, though presumably such power will be exercised only when circumstances arise which will not only justify the Government in disregarding the stipulation of the treaty, but may demand, in the interest of the country and the Indian themselves, that it should do so. When, therefore, treaties were entered into between the United States and a tribe of Indians, it was never doubted that the power to abrogate existed in Congress, and that in a contingency such power might be availed of from considerations of government policy, particularly if consistent with perfect good faith toward the Indians. In *United States v. Kagama* (1885) (118 U.S., 375), speaking of the Indians, the court said (p. 382):

"After an experience of a hundred years of the treaty-making system of government Congress has determined upon a new departure—to govern them by acts of Congress. This is seen in the act of March 3, 1871, embodied in section 2079 of the Revised Statutes: 'No Indian nation or tribe within the territory of the United States shall be acknowledge or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty; but no obligation of any treaty lawfully made and ratified with any such Indian nation or tribe prior to March 3, 1871, shall be hereby invalidated or impaired.' "

In upholding the validity of an act of Congress which conferred jurisdiction upon the courts of the United States for certain crimes committed on

an Indian reservation within a State, the court said (p. 383):

"It seems to us that this is within the competency of Congress. These Indian tribes are the wards of the nation. They are communities dependent on the United States; dependent largely for their daily food; dependent for their political rights. They owe no allegiance to the States, and receive from them no protection. Because of the local ill feeling, the people of the States where they are found are often their deadliest enemies. From their very weakness and helplessness, so largely due to the course of dealing of the Federal Government with them and the treaties in which it has been promised, there arises the duty of protection, and with it the power. This has always been recognized by the Executive and by Congress and by this court whenever the question has arisen.

* * *

"The power of the General Government over these remnants of a race once powerful, now weak and diminished in numbers, is necessary to their protection, as well as to the safety of those among whom they dwell. It must exist in that government, because it never has existed anywhere else, because the theater of its exercise is within the geographical limits of the United States, because it has never been denied, and because it alone can enforce its laws on all the tribes."

That Indians who had not been fully emancipated from the control and protection of the United States are subject, at least so far as the tribal lands were concerned, to be controlled by

direct legislation of Congress is also declared in *Choctaw Nation v. United States* (119 U.S., 1, 27) and *Stephens v. Choctaw Nation* (174 U.S., 445, 483). * * *

We must presume that Congress acted in perfect good faith in the dealings with the Indians of which complaint is made, and that the legislative branch of the Government exercised its best judgment in the premises. In any event, as Congress possessed full power in the matter, the judiciary can not question or inquire into the motives which prompted the enactment of this legislation.

Mr. FITZGERALD. It has never been decided that Congress could divert this title without compensating these Indians for the perpetual right of occupancy that they have.

Mr. SHERMAN. Certainly; and what I wish to emphasize is the fact that the Supreme Court never has so held, and that it is not the intention of Congress and it is not the intention of any Indian Committee or anybody else, so far as I know, to dispose of any right of the Indians except for their benefit.

Mr. DALZELL. Congress is the last judge of what is for their benefit.

Mr. SHERMAN. Congress is the supreme judge.

Mr. BURKE. I do not want to be misunderstood. I have maintained and do declare that in my best judgment this bill does provide what is fair and just and right as a compensation for the Indians from any standpoint.

Mr. SHERMAN. I understood the gentleman's position. How much time have I, Mr. Chairman?

The CHAIRMAN. The gentleman from New York has nineteen minutes remaining.

Mr. SHERMAN. I yield that nineteen minutes to the gentleman from Iowa [Mr. Hedge].

The CHAIRMAN. The gentleman from Iowa [Mr. Hedge] is recognized for nineteen minutes.

Mr. HEDGE. Mr. Chairman, I rise in a sense to a question of personal privilege. During my brief and quiet sojourn here I have been the recipient of constant favor from many Members of this House without distinction of party or religion. This kindness, so grateful to my feelings, has from the first day of the extra session of the Congress presented itself in a new and interesting form. In addition to the usual inquiry after my health or the nature of the private legislation which I may be suspected of a desire to promote, these friends, assuming an air of affectionate solicitude too good to be true, have been daily insisting on my enriching their intelligence with my views of the Iowa idea, until at last I am, like the unjust judge, from pure weariness compelled, so far as in my limited measure I may, to satisfy their importunate morning thirst in this regard.

Furthermore, my sense of loyalty to my constituents and neighbors, as well as of duty to these teasing associates whose travel in their own country seems never to have extended west of the Alleghenies, who have never gazed upon the star of empire, have no notion of its present position or memory of its triumphant course, impels me to offer what help I may to their understandings by a hint or suggestion or two of the quality of the men over whose homes and fields of industry that star has so reasonably fixed its abiding place.

[#18]

(Concerns extension of railway to Gregory South Dakota.)

[History of the Chicago & North Western Railway System, 137-138]

EXTENSION FROM BONESTEEL

The extension from Bonesteel to Gregory, S.D., a distance of 25.96 miles, under construction at the beginning of this fiscal year, had been completed and opened for traffic. A further extension of this line from Gregory to Dallas, S.D., a distance of 4.84 miles, had been undertaken and would be completed during the ensuing fiscal year.

* * *

PIERRE, RAPID CITY & NORTH-WESTERN RAILWAY

* * *

The company had also undertaken the construction of an extension from Bonesteel, South Dakota, to Gregory, South Dakota, a distance of 25.93 miles, and would be completed during the ensuing fiscal year. This extension will pass through Gregory County, which embraces that portion of the Rosebud Indian Reservation opened to settlement in 1904, and will terminate near the present eastern boundary of that reservation.

[#19]

(Statute extending time for homesteading on lands which were heretofore a part of the Rosebud Indian Reservation.)

[Act of Feb. 7, 1905, Ch. 545, 33 Stat. 700]

CHAP. 545.—An Act To provide for the extension of time within which homestead settlers may establish their residence upon certain lands which were heretofore a part of the Rosebud Indian Reservation within the limits of Gregory County, South Dakota, and upon certain lands which were heretofore a part of the Devils Lake Indian Reservation, in the State of North Dakota.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the homestead settlers on the lands which were heretofore a part of the Rosebud Indian Reservation within the limits of Gregory County, South Dakota, opened under an Act entitled "An Act to ratify and amend an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation and provision to carry the same into effect," approved April twenty-third, nineteen hundred and four, and the homestead settlers on the lands which were heretofore a part of the Devils Lake Indian Reservation in the State of North Dakota, opened under an Act entitled "An Act to modify and amend an agreement with the Indians of the Devils Lake Reservation, in North Dakota, to accept and ratify the same as amended, and making appropriation and provision to carry the same into effect," approved April twenty-seventh, nineteen hundred and four, be, and they are hereby, granted an extension of time in which to establish their residence upon the lands so opened

and filed upon until the first day of May, anno Domini nineteen hundred and five: *Provided, however,* That this Act shall in no manner affect the regularity or validity of such filings, or any of them, so made by the said settlers on the lands aforesaid; and it is only intended hereby to extend the time for the establishment of such residence as herein provided, and the provisions of said Acts are in no other manner to be affected or modified.

Approved, February 7, 1905.

[#20]

(Legislative history of H.R. 25608 a bill for sale of surplus lands of the Rosebud Reservation)

[41 Cong. Rec. 241 (1906-1907)]

Rosebud Reservation: bills for sale of surplus lands in (see bills S. 6618; H.R. 20527, 24987, 25608.

[41 Cong. Rec. 286 (1906-1907)]

H.R. 25608—

To authorize the sale and disposition of surplus or unallotted lands in Tripp County, in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect.

Mr. Stephens; Committee on Indian Affairs 2800.

[41 Cong. Rec. 2800 (1907)]

By Mr. STEPHENS of Texas (by request): A bill (H.R. 25608) to authorize the sale and disposition of surplus or unallotted lands in Tripp County, in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect—to the Committee on Indian Affairs.

[#21]

(Minutes of Council from Dec. 14 to Dec. 20, 1906 and Jan. 7 to Jan. 21, 1907)

Proceedings of a council held at Rosebud Agency, S.D., December 14th, 1906, by James McLaughlin, U.S. Indian Inspector, with the Indians of the Rosebud Reservation, for cession to the United States of their unallotted lands in Tripp County, South Dakota.

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Council convened at 1 o'clock, P.M., with about 150 Indians in attendance.

AGENT KELLEY: My friends, you have been called together in council at the request of Inspector McLaughlin, whom it is hardly necessary for me to introduce to you, as you have all met him before, in order that he may talk with you in regard to the opening for settlement of the unallotted lands in Tripp County. As you have met him before, you all know that he is a good friend of yours and that you can place confidence in what he tells you.

INSPECTOR MCLAUGHLIN: My friends, I am glad to meet you here today. We do not meet as strangers as we have met many times and known each other for many years. You all know that I am a sincere friend of the Indians and earnestly interested in their welfare, and feel much pride in the steady improvement and advancement of the Sioux Tribe.

You have been assembled in Council here today that I may explain to you people the object of my visit to your Agency at this time. I am here under orders of the Secretary of the Interior to submit to you a proposition for the cession of your surplus unallotted land in Tripp County.

Instructions prepared by the Commissioner of Indian Affairs, who has special charge of all Indian matters, have been furnished for my guidance and to govern in our negotiations.

I now submit to you that the lands of your reservation embraced in Tripp County approximates 1,094,000 acres, of which there has been about 187,000 acres allotted, leaving a surplus of about 907,000 acres. The Department desires that you cede these unallotted lands, to be disposed of under the general provisions [2] of the homestead and townsite laws of the United States, to be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the manner in which the lands may be entered and settled upon.

I trust that we may reach an agreement as to the price per acre and plan of payment, which will meet with approval of the Department and concurrence of Congress, and I shall endeavor to explain the question so that you may clearly understand every phase of it.

This is about the fourth time that I have been here negotiating with you for land. I have been here so often that upon my arrival a few days ago, several of my Indian friends asked me "If I was after more land," that "Every time I visited here I was asking for land." My friends, I think it to your interests that a person who understands your needs shall be sent to negotiate with you rather than a person unfamiliar with the conditions existing among the Sioux, and I have again been sent here to present another proposition to you. In the beginning, I will state that on the 3rd day of this month, eleven days ago, Congressman Burke of this State introduced a bill in Congress for the opening of Tripp County. This document in my hand is a copy of the Bill. I did not see that until I came here. I was not aware until I arrived here that it had already been introduced in Congress, but I had

heard that such a Bill was going to be introduced, and yesterday's paper had an item stating that Senator Gamble had introduced a similar bill in the Senate, day before yesterday.

I understand that a number of copies of this bill have been sent out to parties here on the reservation, and have been circulated and passed around among you; therefore, many of you doubtless understand its provisions, but if you wish to have me read and explain it, I will do so. This Bill is very similar to my instructions. It is along parallel lines, and if it is your desire that I read and explain it, giving the full meaning of each [3] provision, I will do so.

(Many voices. We want you to read it and explain it. Many of us have not heard it read or explained)

(Inspector McLaughlin reads House Representative Bill #20527, 59th Congress, 2d session)

Inspector then said. I have now announced the object of my visit to your reservation at this time, and have read the Burke Bill, providing for the opening of the Tripp County unallotted lands. I think I have explained very clearly the provisions of this Burke Bill, which is almost identical with what my instructions, prepared in the Indian Office, are. You therefore have the proposition before you and I would like to hear from you people as to the sentiment prevailing regarding the matter. You have undoubtedly been discussing this among yourselves, as I know that it has been talked of in a general way for some time past, and I would like to know your sentiments regarding it. I want you to bear in mind that I am a very patient listener and everything you say here in council will be taken down by the stenographer and be transmitted with my report, and I shall endeavor to explain very clearly anything you may not fully understand regarding this proposed cession.

The question now before you is, "Are you willing to dispose of your unallotted lands in Tripp County?" If so, I would like to hear from you and if you are not in favor of it, I would like to have you give your reasons. I am here to answer any questions and to explain any particular phase of this proposed cession you may not understand, and will not mislead you by any misrepresentations.

TWO STRIKE: My friend, I am going to tell you first my own thoughts. You were here before for a similar object to this. You came for a piece of land and I went under a hardship for the children. You came for land and I gave you the land and you took it back with you. The land was dear to us. You said the payment would be for five years. I think we have three years more to come. [4] The Great Father made some payments to the people here. I suppose the Great Father has no more money. I think the people did not get enough money at that time. They got left. I think they borrowed money from the stores and accomplished what they wanted. My friend, you have mentioned a good many things here, but this is all I know. I thought I would explain myself. I gave you the land and thought the school children would have a share of the money in their pockets. That is the reason I gave you the land. You got the land, but instead of giving the children's money to them, you held it back. The children here are ragged, have nothing, they are ragged and hungry amongst the people here. They go to many different schools, and keep writing that they want money, that they want clothing, and the little money we earn we have to send to them.

My friend, there seems to be no money to buy the land with. You ought not to have come. My friend, you have said a good many words here, but we wish you to consider this matter. One more word I want to say. When

General Crook came here, all of us signed his bill. It seems that the Government has no money to buy land with, you ought to pay for what you got before asking for more. The railroads passed here without paying us anything. I understand there is going to be another one through here, but we have not heard anything about the pay. My friend, tell the railroad people not to come in here, to turn back from where they are. We want our children to grow up on this reservation and on this land. They have no land yet and we want them to grow up here. That is all I have got to say.

INSPECTOR MCLAUGHLIN: In regard to the railroad running north of White River, that road is being built across what is called the ceded portion. The Indians of the entire Great Sioux Reservation ceded that portion of the reservation in 1889, by what you call the Crook Treaty, the act of March 2, 1889. That land has all been surveyed and you have received credit on the books of [5] the Treasury, \$1.25 per acre for the land taken the first three years after it was opened, 75¢ per acre for the next two years, and 50¢ per acre for all the rest excepting two sections in each township (school lands) for which \$1.25 per acre was credited you. If a railroad was coming through your reservation proper, that is, any of the segregated reservations, you would receive pay for it. There is no railroad running over any portion of the Rosebud Reservation, none within the boundaries of your reservation. That railroad in Gregory County has not yet come across your reservation boundary, but should it come into your reservation, you would receive pay for its right of way. Any of the Indians who may live in Gregory County whose allotments have been crossed by that railroad, have, or will receive pay for the privilege of crossing their allotments, so you need not worry about that, my friends.

STRANGER HORSE: My friend, you came for some business, and what you have come for, I put my hat over, and want you to consider it. (Placing his hat over the Burke Bill) My friend, I will tell you that the surplus land we have, we do not propose to sell any of it yet. My friend, when I went to Washington and stood there, I guess you know all that was said at the time. All the good land we have left we have saved for our children. I mentioned that question at Washington and you were there and heard it. I said that. You have some money for a good many of our children, and many of our children have not got land yet. This I have said to the Great Father, and that is the question I put my hat over. What you now come for I put my hat over. My friend, the land we sold down there in Gregory County we have sold to you. I will say that the agreement you have changed it in a good many ways to suit yourself, and our children are ragged and a good many nearly frozen to death. My friend, I will say that we have a lot of children who can take up that Tripp County land, which is the best we have left, and we want them to have their allotments there, and when [6] that is done, and there are any surplus lands left and you then come, we might consider the question. I do not blame you, and I am not going to blame the Great Father, but I blame the Great Father's council. I want you to take this answer back and I want you to say it quietly.

I will tell you this, my friend. Sometime in the future, after a while, we might sell the land, but we will sell it at auction and in tracts of 160 acres. My friend, that is all I have to say. Very short words. I wish you to take this answer back to the Great Father with a good heart.

HIGH HORSE: My friend, I heard that you were coming. I have been expecting you and I see you today. What you come for is the land. The land you come for is

mine. My friend, I will tell you that we are not going to sell you any of the surplus land. I want you to know that. My friend, you have been here to see us often. You used to have a good feather in your hair, but we do not want you to wear it this time by getting our land. My friend, I cannot spare any land. That is all I want to tell you.

HIGH HAWK: When you came here for a piece of land before, I met your wishes, but I stand back this time. Our children want that piece of land down there. That is the reason I stand back. I have four grown daughters and they have children and they need the land, I say this because they want the land. The people are not going to sell you the land and that is also my mind. You are a good man, just the same as one of us. Like an Indian we know each other exactly. We all hold you up. That is what we say. But the people are not going to spare any of that land. They are not going to sell any of that land. I say this strong and stop.

GHOST BEAR: My friend, I want to shake hands with you very tight. I remember how hard I shook hands with you here before. That is the time when we sold Gregory County. At that time, I took [7] you for a very good man. That is how I judged. And you said that the council was good at that time. They all want me to ask you how you sold our land, have you brought the money for the children? They do not want me to sign anything. They told me to tell you to go away from here with a good heart. That is what they say. If you go home now and tell them: what I have said to you and come again with the money in your hand for the children, then their hearts will be good. In case you do that you can trade me off for cigars.

CHIEF PICKET PIN: I am not going to say very much, but where you come from, I am going to mention them. I think the Great Father has got counselors there. They

have a Secretary there next to the Great Father. If there is any person there in authority he ought to have said before you come "Hold on, let us pay them old debts, let us settle the Gregory County claim first. You see only a few people here today. Nearly all of us are dead now. When you get back home, you want to say to those in authority, that because the children's money has been withheld we will not give you any answer. That is what we want you to say. This is the way I think. The reason I say that, the Great Father ought to depend on me. I have helped you to fight many people here and make treaties. You want to tell the Great Father that our children's money has been held back and many of them have died. What do you hold their money for? That is what you want to tell the Great Father. We are friends to you. He sent you here. He ought to send a man here who is a rascal that we ought to talk roughly to, but you are a friend of ours so that is why you come. My friend, you are going home this time without any land.

CROW DOG: My friend, you came for a piece of land before, and this is the way you came for it. You come again and ask the people here about their land and if we are going to consent or [8] or not. That is what you come for. The last time you were here, you mentioned about the children's money, very good words. You answered all the questions we asked you then, and we did not notice anything wrong at the time. A while ago you said "Are you going to accept this proposition or not?" My friend, I will say to you I am on the side "they say no."

HIGH PIPE: Four questions I am going to say to you. The Great Father wishes the people to live and they feel the same way. We are Indians. We like to have the generation have long lives, to live longer. It looks to me, my friend, that the Great Father had to wake these

Indians up. Looks like their heads are now open and faces open. Now at the time the Gregory County treaty was made I was amongst the people here who were hard up. How were we going to make a living? They thought this way. They thought they would sell the land and get lots of money for their children and get that money and buy something useful, but no, the Great Father has got a new idea into his head and holds it tight and the people are kicking on it because they can't reach the money. My friend, our Gregory County payment lasts two years yet. We all know that. The best land we have is in the eastern part of our reservation, Tripp County. The Indian people want to get land for their children there. They are very anxious to get land for their children down there. My friend, I guess the Indians have more knowledge than formerly, they have waked up, that is, they have stronger backbone, therefore we will hold on to our best land for our children. My friend, I don't want you to go to the issue stations and have a talk with those people down there. Do not do that. Talk to our Agent here, then go to the Great Father and say the Rosebud Indians won't cede any more land because you have waked them up. You have their children's money and you won't give it up. That is what we want you to tell the Great Father. My [9] friend, the kind of a man I am is that anything I say I always keep my word.

RED HILL: What the Chiefs and head men have said to you is true. I will tell you now do not go any further.

DOG TRAIL: My friend, I want to tell you something I want you to judge very carefully. I am a man who has no allotment yet. That is the kind of people you ought to question. What was accomplished by former treaties I am holding on to, but do not expect to live long. I always object to anything new that comes up, because I want the children to have something after I die. You came here for

a piece of land so they gave it to you. You mentioned lots of money at the time. Then I said "How". For my part, I buy grub for the children, I buy clothing for the children. I see those children have no money. In that way I throw my money to the children and I do not have anything for myself and that is not very good to us. My friend, you said some very good words to the people and going to fool the people with those words, that is what I thought. But the Great Father has a law for his people. As Indians we have our rights and certain powers. We have a right to give ourselves a law. A good many people have spoken for you and spoken well, but I am afraid of you. In this way I will say that I will have nothing to do with this cession. You said that anybody might ask questions. I am somebody although I have no allotment.

INSPECTOR MCLAUGHLIN: My friends, you all know that it takes two persons to make a bargain in the purchase or disposal of anything. In the matter of the cession of your surplus lands in Tripp County, you represent your individual interests and the common interests of the tribe. I am here representing the Government of the United States in these negotiations. There can be no trade or bargain of this magnitude made without free and earnest discussion of it, and as the proposal for the cession of [10] Tripp County unallotted lands did not come from you people, it is not my intention to bring to bear upon you any undue pressure. I do not intend to do that. I will simply state facts and try to have you understand what is best for your interests, individual interests as well as the interests of the entire people. I see that your principal objection to discussing the matter is because your minor children, all under 18 years of age, have not received payment from your Gregory County lands. That is a very small matter. No doubt you feel that keenly, but that is a small matter

compared with the main question at issue, which is, the legislation proposed by Congress, and in connection with this I will read an extract of the Commissioner's instructions to me. I would feel that I was derelict in my duty if I did not explain this matter to you people very clearly. A paragraph of my instructions reads as follows:

It is but right to the Indians also that you should explain to them with great particularity that the law as defined by the Supreme Court of the United States, our highest and final tribunal, vests in Congress the right to open their lands without their consent; that the desire of the Department in sending you to talk the matter over with the Indians is to obtain from them their views of the terms on which the opening ought to be made; and that it will doubtless be to their advantage to enter into an agreement containing such reasonable provisions as they think would be most beneficial to them as a tribe.

Now, my friends, I feel confident that in case you close your ears and will not listen to what I desire to say to you and close your eyes and not look at the proposition, that the Burke Bill would become a law just as I have read it to you. I wish you to throw all grievances behind you and weight the question with clear judgment and as to what will be best for your interests. Meet me here tomorrow morning at 9 o'clock and tell me of any changes you would wish to have made in this bill which has already been introduced in Congress. It is my desire to do the very best possible for you that the Department may approve and Congress ratify. I can speak to you for the Secretary and Commissioner, because I know their minds in this matter, and we should be able to make an agreement which will meet your wishes and be acceptable

[11] to Congress, without having Congress open Tripp County without your consent. I would suggest that you people get together tonight and take this copy of the Burke Bill and study it. This copy belongs to your Agent, and I know that he will let you have it for that purpose. Have it read by some of your young men who can understand it, and see what there is in it that you concur in and would consent to, and what, if anything, additional you would wish inserted. I promise you faithfully that I will do everything consistent that I can to meet your wishes in the premises, but it must be such as will meet the approval of my superiors. I would not wish to report back by letter or to return to Washington in person and report that the Rosebud Indians would not listen to a proposition; that they simply say "No" and would not discuss the matter. I shall expect you to be ready tomorrow morning to discuss the matter and state to me what your objections are and what you demand over and above what this bill specifies.

As I said before, it takes two parties to make a bargain. You are one party in this matter and I the other, I representing the Government, and we should discuss it in a friendly manner. My friend, High Pipe, said that he did not wish me to visit the sub-issue stations, to which I now state that I will not, unless we should reach an agreement here at the Agency, and then to make it more convenient for the Indians and save them long journeys here, I will visit the outlying stations. I do not wish to report that you people would not listen to any proposition and that you refused to discuss it when submitted to you. I want you to think the matter over tonight and meet me tomorrow and let me know your minds, that I may be able to judge as to whether or not I can meet your wishes. I promise not to continue our council long. I will not keep you here from day to day for any great length

of time and especially against your will. If we cannot reach some agreement tomorrow, or have some encouragement to justify my remaining, I will discontinue the council and leave your reservation. That is all I have to say [12] tonight and as I suggested, meet me at 9 o'clock tomorrow that we may discuss the matter further.

THIN ELK: My friend, at this time it makes me think that there are no white people. We sold a piece of land and we got two payments. The second payment was \$6.00 that we got, and that is why it makes me think there are not any more white people and still you come here to buy more land for them. For once, my friend, if you come here and do not succeed in buying land, it will not kill you. My friend, you must stand by us and help us, and tell the Great Father what shape we are in. We are starving to death.

TODD SMITH: Tonight you ask us to hold a council and consider this matter. You told us to consider this paper, whatever is in this paper, and we shall do that. I will say a short word whatever I think is not right in it. In the first place, it says for the first three months it is going to be \$5 per acre and the following three months it is going to be \$4 per acre and the remainder shall go at \$2.50 per acre. You must remember that the white people are smart and they are schemers and they are out to work for their best interests. Now we will say for the first three months where they have to pay \$5 per acre, will there be any rush for the land? The first three months will be gone and then the \$4 payment will come. Will they rush right in and take it? What I say about the white people being smart and schemers, they will wait for the first three months to pass and then the next three months to pass and then we will realize but \$2.50 per acre for our land.

INSPECTOR MCLAUGHLIN: All the good land will be taken the first three months. You all remember the choice lands were all quickly taken when Gregory County was opened to settlement.

TODD SMITH: I do not know that such will be the case again.

(Council adjourned at 4 o'clock P.M., to be reconvened at 9 o'clock A.M., Saturday, the 15th.)

[13] Council reconvened at 1 P.M., Saturday, Dec. 15th.

INSPECTOR MCLAUGHLIN: Having counceled among yourselves last night, I hope that you have come to some conclusion as to what you wish to present and I am now ready to hear you.

HIGH PIPE: I have a short statement to make. We adjourned at about 5 o'clock yesterday. You have said this to us. "Tell me your reasons; that we would have a talk at 9 o'clock in the morning again, for us to give you our reasons. My friend, we had a talk in this council room last night and we have fixed up our reasons and we want you to hear them. There is one question I want to say here. We have accomplished what you want, but my friend, if you have anything to say I want you to say it.

RALPH EAGLE FEATHER: You came to ask the whole people some questions. What the people want they have put in writing. A very little question I want to put to you here. At the time you came here and made a treaty for our Gregory County Lands, you mentioned five years' payments to us at the time. You said that every person would get \$30.50 annually. Now, my friend, we respect you a good deal because you belong to the tribe, married into our nation, that is the reason we respect you a good deal. You know that. What we wanted and what you wanted we accomplished in full at the time, but you have not fulfilled your promises. You

know that, and we know it. We did not get any \$30.50 per head yearly from that treaty. We have not received it. We know that. My friend, we have been discussing this all last night and have considered this matter carefully and drawn up this paper setting forth what we want and if you do not accept what we have on this paper, you will have to go home without any land. My friend, all we ask for is in this paper and I will say something again when you have read it.

STRANGER HORSE: I have a few words to say. My friend, We will say this to you. Because you belong to the north side [14] we consider we are friends together. That is why we have accepted every treaty you come here to make with the people. Yesterday I said "Wait and consider this matter." I said that if anybody comes here to make a treaty in a quiet and gentle way, we want to consider the matter in the best way we know how. Of course we have not accomplished all we want yet, and I put my hat over it yesterday. Of course that is why I say the Great Father's council forced a law (Gregory County Agreement) upon me and now I want them to stop a while. I thought you understood all the questions at the time and that is why I did not say very much. Last night I put something on paper you will understand. The Rosebud people are poor people. We cannot depend on anybody. In the future we want to make good treaties and we want to make a good one this time. We want to make a good treaty and therefore I want you to notify the Great Father to consider this matter carefully and make a good treaty. Congress proposes a law and leaves it all in the hands of the Secretary of the Interior. When we made that treaty for Gregory County we never mentioned anything of that kind, but he kept the money from the children and put it one side. We did not consent to any such law at that time, but he has done it. I hope that

you will put that one side and make a nice good treaty this time. If you had made a nice good treaty we would have been all right. The reason I say this is that we do not want it so in this treaty. My friend, we call upon you as a friend and ask you to try to help us and assist us all you can when you go to Washington. That is all I have got to say. If you say anything further I might talk again. This is the way we have made up our paper last night and anything you have to say to the people, say it now and then we might answer you.

INSPECTOR MCLAUGHLIN: This paper which you have handed me I will comment upon in order of its numbers.

1st. You will not agree to dispose of any lands until time mentioned under Gregory County treaty expires, and 2nd will [15] not agree to any land sale until after the unallotted children have received land, 1/4 section each.

As to the first and second requests, I may answer them as one, they are really connected. I can positively promise you that, in case we reach an agreement, it will provide for the allotment of lands to all children born since March 3, 1899, and they may be allotted in Tripp County and before the lands are opened. It would take some time to make these allotments and it would most probably be two years before the Tripp County lands could thus be opened and payment for the Gregory County lands would be then about terminated. I am ready to incorporate in the agreement that all children born since March 3, 1899 and up to the agreement is ratified, shall receive an allotment of 160 acres each, and that these allotments be made before Tripp County is opened.

3rd. You say you fully concur with the Secretary of the Interior when he stated some three months ago that the fairest way to open Indian lands is to sell them at

public auction, and he has since then opened lands in Indian Territory by auction. I am of the opinion that you have been misinformed or misunderstood the newspaper reports which you get this information from. Indian lands opened to settlement are not sold at auction. I spent four months in the Indian Territory last summer, in the section of the country this has reference to. The lands were on the Kiowa and Comanche reservation in Oklahoma, and known as the Big Pasture and contained 500,000 acres. Six townsites were reserved from the tract opened to homesteaders. These townsites were appraised and sold at public auction to the highest bidder. They had five townsites set apart on the Osage Reservation. They were appraised and sold to the highest bidders also, and I was present during the sale of some of these lots. The Kiowa and Comanche lands outside of these townsites were appraised and located on [16] by homesteaders. They had a commission to appraise the lands, one of whom I know well, and homesteaders entering upon these lands had to pay the appraised value.

In this connection I will say that in case Tripp County lands should be ceded by you people and opened to settlement, we will incorporate a provision in the agreement which will provide for the setting apart of tracts for townsites, as many townsites as the tract ceded would justify, to be sold at public auction and the proceeds placed to your credit. This can be made to meet your wishes. I have no doubt but that there would be from four to six townsites selected in Tripp County, there being 907,000 acres of surplus land, while with only 416,000 acres in your Gregory County cession they have laid out ten townsites. In this way you would get the benefit of the proceeds of the townsites instead of the land speculator. All the townsites would be designated by the Secretary of the Interior before the land would be opened.

5th. Your fifth item is that "Land in Gregory County is now worth \$20 to \$45 per acre and Tripp County land is just as good." I am not prepared to argue this contention of yours, but I doubt the statement very much. A few individual tracts might sell for that, but I know Gregory County lands too well to accept that statement, and there is considerable of that cession not taken. I also know your Tripp County lands very well, having been over it half a dozen times, and know that while there is much excellent land within its boundaries, there are some very inferior tracts of broken land and some sand in the southeast part.

6th. In your sixth item, you state that you see no reason why you should sell your land for school purposes at a less price than other people pay. I will answer that by stating that all of the states that have been admitted to the Union in the last 40 years have had Sections 16 and 36 in each township donated to them [17] by the General Government, for the public schools of the respective states, and the price that the Government had paid in each instance has never been, to my knowledge, to exceed \$2.50 per acre, and in most instances not exceeding \$1.25 per acre. As I stated last night, you will share equally with the whites in the benefits of this school fund, and under the circumstances, \$2.50 per acre is a good price for the land. The State has to take Sections 16 and 36 in every township, good or bad, unless these sections have been appropriated by an allottee, in which event a like amount in the same township is selected in lieu of it.

7th. You ask that the money due your minor children under the Gregory County agreement to be paid according to agreement. I will answer that when I get through, as there are some of your items here which will be covered by the same remarks.

8th. You ask that those entitled to allotments, but have not yet taken them, be allotted, of which there are about 80 in all. In answer to that I will say there will be no difficulty in that. All beneficiaries of the reservation who have not yet received allotments can be allotted before Tripp County is opened to settlement, and they can take them anywhere on the reservation, including Tripp County. There will be a provision in the agreement to that effect.

9th. You desire that applications now pending before the Indian Office asking to be permitted to change present location of all allotments be acted on before the opening of Tripp County. I can promise to incorporate that provision in the agreement, and you people will be fully protected in that. As I previously stated, it would doubtless take a couple of years to bring about the opening of Tripp County. These allotments are what would delay it. We will incorporate in the agreement a provision that Tripp County shall not be opened until all the children born up to the ratification of the agreement, who have not received [18] allotments, shall be allotted 160 acres each. These two items are already covered by The Burke Bill, which provides for relinquishments and reallootments and allotment to children, and giving the right to take such allotments in Tripp County.

10th. You desire consideration and action in all cases where heirs are seeking to obtain the portion of land that would have been allotted to deceased parents and relatives had they lived. In answer to this I would state that the general allotment act of 1887 and the rulings of the Department under it covers this fully. Whatever the General Allotment Act provides would govern in this case.

11th. You request compliance of Agreement relative to the payment on time specified in the Month of October

in each year. I will say in reference to that, that in case we enter into an agreement, when we reach that section where it should be included, we can discuss that matter fully and have it distinctly understood. If we reach that point, we will not let that prevent us from making an agreement. But as having a direct bearing upon this, I would here say that provision should certainly be made for furnishing stock cattle. The only way you people may become independent is to stock your own ranges, so that you will not have any cattle but your own upon them.

12th. You request that the proceeds from the sale of Tripp County lands be paid to the Indians, minors and adults, in October of each year, and that all the money so received in each respective year shall be paid at such payments. This is a matter that is open to discussion and we would have to talk it over between us when we reached that part of the agreement.

13th & 14th. You desire the Lower Brule agreement to be carried out, etc. My friends, you know my attitude in regard to that agreement and you know the statement I made to you in 1898, eight years ago last March. I stated my honest convictions [19] at the time, and your Agent at the time, Dr. McChesney, verified my statement and corroborated it by having read the same letter that I had. It was a letter written by Hon. Hoke Smith when he was Secretary of the Interior, and authorized the Commissioner of Indian Affairs to make payment to all allottees under the act, over 18, said Act being Act of March 2nd, 1889, after reaching their 18th year, but the new Secretary changed that, directing that the benefits of Sec. 17 of the Act should only be paid to those who were 18 years of age or over when the allotments were authorized. I perceive by your talk that the one thing which displeases you most of all is that of having the shares of your minors withheld, that is, the proceeds of the

Gregory County agreement, and I desire to make a very careful statement to you as to the views taken on that question by the Interior Department officials.

As to the shares of minors, that is, those under 18 years of age, being returned to the United States Treasury to await the beneficiary arriving at the age of 18 years, I wish to explain this phase of the question very particularly and trust that I may be able to bring you to understand the reasons influencing this policy. In withholding the money of minors until they are 18 years of age, the Department is thus dealing with the Indians in the courts throughout the several states require of white people in cases essentially similar. The money in question belongs to the children and not to the parents, and the courts, in cases of similar character, inquire into the capacity of the parents as to their intelligence, sobriety and general characters, before even allowing them to become bonded guardians and take charge of the estates or monies of their children. A parent who is indolent and imprudent in managing his own affairs and conducts his own business in a weak and indifferent manner is not permitted to handle the money of his children even should he be able to furnish the required bond, which is not easily obtained under such [20] circumstances. It is true that the Sioux Indians are making commendable progress, but it is doubtful if the average Sioux Indian of today could obtain a bond which would be acceptable to the court if he were to apply for the legal guardianship of his child, with the right to take charge of the child's money, and account for it properly when called upon by the court as required by law.

I am advised by the Commissioner of Indian Affairs that he has caused to be prepared, upon information obtained from trustworthy sources, a list of the Indians of the Rosebud Reservation who are temperate, prudent,

honest and otherwise fitted to take charge of the money of their children which list is designated a "Roll of Honor," and to the persons whose names are on the roll, your Agent has been instructed to pay the Gregory County land money of their children.

The Commissioner also advises me that Indians not on the said Roll who are ambitious to be included in it, can have such ambition gratified by fitting themselves for enrollment thereon, on the same lines on which those now on the roll have proven themselves as worthy to be there; and also that any Indian now on the Roll is liable to have his name dropped therefrom by departing from the straight forward path as marked out by the Department. The purpose of withholding the money of the minors until they attain the legal age as which they are expected to be able to properly transact business for themselves, is purely benevolent. It is the law of every state in the Union and has been adopted by the Department in the interest of justice to the children who have a right to demand just treatment from their guardian who is trustee of their estates and bound by law and justice to conduct their business affairs in a manner which will best promote their welfare. I have known of many instances, particularly at the Sisseton Agency, where valuable estates of minors have been fritted away by their [21] parents, or Indian guardians, who had themselves appointed to such guardianships, and when the wards reached the legal age and demanded a settlement, the estates had been squandered and the bond so worthless that the wards were left without anything, and without redress, as nothing could be obtained from either guardian or bondsmen, and it is to obviate the possibility of such waste of the estates of minors that the Department has adopted the policy of withholding their shares until they reach the age of discretion, except in

instances where the parents have proven themselves deserving of having their names placed on the Roll of Honor, and deemed worthy to be intrusted with the care and disposition of the shares of their minor children.

My friends, I have endeavored to make this phase of the question quite clear and trust that you may now appreciate the attitude of the Department in this important matter; that this policy is in the interests of justice to the minors who will ultimately receive their full shares, and this explanation should disabuse your minds as to any injustice being done you in the premises. If you look at this matter in its true light, you cannot fail to arrive at the conclusion that your contention in this respect is not well founded.

I will now say that I am very much pleased with the result of your meeting last night. You have formulated a paper which gives us a basis or ground work to start upon. Whilst there are some things mentioned in it that I regard entirely unnecessary, still there are some very good points that I am willing to adopt. The most serious contention to agree upon is your article 12. I know the policy of the Department in relation to the payment of the money of minors to the parents so well that I fear this to be the most difficult to adjust. It is true that Sec. 5 of the Burke Bill gives the Secretary of the Interior full discretionary power as to how the proceeds of the Tripp County lands shall be expended, but I believe that an agreement can be worded that will meet your [22] wishes in this respect, by changing that section of the bill slightly. This for the reason that my letter of instructions says that the special needs of the Indians should be inquired into. Their Agent should be consulted and a plan for the disposal of the proceeds should be formulated that will tend to promote the welfare of the Indians and start them on the road to civilization and self-support. If

stock cattle are needed, provision should be made for their purchase with a part of the funds to be derived from the cession, and the agreement should not provide for the payment of any large sum or sums to the Indians in cash.

The Department feels that the disposal to be made of the proceeds arising from the cession is a subject requiring most careful and earnest consideration, as experience is convincing that annuities and the issuance of rations to Indians is detrimental to their welfare.

My instructions prepared by the Commissioner of Indian Affairs and approved by the Secretary of the Interior, directs me to consider these matters and place them before you, and it is to arrive at what will be the best interests of you people that I have been sent here. You appear to be very fearful of Sec. 5 of the Burke Bill which leaves it discretionary with the Secretary as to how the proceeds of Tripp County shall be expended. My friends, I can assure you that the Secretary and Commissioner have your best interests at heart, not only your interests but the interests of all Indians, and should the expenditure of that money be left entirely in their discretion, you would not suffer in any respect as your interests would be well guarded. We can, however, incorporate some item in the agreement which will make that feature better understood by you and meet your wishes. The settlement of a disputed question is often adjusted by compromise, which means that each party to the contract concedes some point and we may be able to thus effect an agreement.

[23] I have consumed considerable time in making these explanations and some of you may now wish to express yourselves regarding the matter.

RALPH EAGLE FEATHER: My friend, this is our wishes to have \$5 per acre and we put that in writing. I want you to look at this (hands clipping from Gregory

County newspaper) very carefully and look at that and consider it. Here is another one, 160 acres, two miles from Dixon, all broke, 160 acres. (Hands another clipping) We know this amount and want you to consider this very carefully. You say it cannot be \$20 per acre. There is \$20 right there. (Hands another clipping) I wish you would hear me what I have to say. You have bought our land very cheap and then when you sell the land you get high prices for it. You know we are poor people and when you come here you try to fool us with the prices you offer us for our land. Now look at me my friend. We are Indians and when we received annuity goods and the children did not get any money, we did not care for it. Now the annuity goods have expired. There are no more annuity goods. We work for \$1.25 per day and when we work we eat it up. Our children are at school, ragged. Nothing on our children. Now this is what you have accomplished for us here. Here is the treaty we made with you in 1901 which you have stepped over and now you want more land again, the land we depend on in the future. We want to get full pay for the land we sold you and something to eat from it. We are saving that Tripp County land for ourselves. The terms made in that Gregory County agreement have not been fulfilled and have been changed. Somebody has held it back. My friend, you love money. Everybody loves money. You were sent here. You were willing to come to work amongst us. Now we want our children's money. We are looking towards where the money is. We want it for our children according to agreement, in 1901. There is an objection I have against that Burk Bill. It leaves everything in the Secretary's hands. He would have it all his own way. We [24] could not do anything. He has held our children's money back, but we never gave him any law to do so. What are we going to do? We are poor

people. He ought to take pity on us. You have said a while ago that Congress is strong. When the Congress passed a law and fixed this thing up for us, the Secretary stepped on Congress. My friend, they propose giving full power to the Secretary in this matter. I hope you will appeal to them for us and take that off. Now we want a good deal of money for that Tripp County. That is not as much money as it is worth. Tripp County is better land than Gregory County. If we get the money ourselves we can do well with it. We want to have the full amount of the land paid to us in cash and in that way we can buy our own stock and cattle. That is all I have to tell you my friend.

(Hands Inspector an extract from pages 15 and 16 of the minutes of the councils held from Sept. 5 to 14th, 1901, for the surplus lands in Gregory County, So. Dak., which he requests to be incorporated in the minutes of this council.)

EXTRACT.

INSPECTOR MCLAUGHLIN: This price, I offer you, amounts to a large sum of money. Your unallotted lands in Gregory County approximate 416,000 acres, which, at \$2.50 an acre is \$1,040,000, and I suggest the following manner of payment: Fencing out boundaries or your reservation: building dams and reservoirs to retain water where required: \$40,000.00

Stock cattle (2 year old heifers and graded bulls) 250,000.00

Cash to be paid in five annual payments, Total 750,000.00

Total \$1,040,000.00

This \$750,000 to be paid in 5 annual cash payments of \$150,000 each.

The census rolls show 4,917 persons belonging to this agency, which would give an annual per capita of \$30.50, that is \$30.50 once a year to each man, woman and child for a period of 5 years, aggregating \$152.50 that each man, woman and child would receive in the 5 years. At the expiration of 5 years, when this per capita payment would end, the material increase derived from your stock cattle, would then be marketable, and continue to furnish a large number of beef cattle annually thereafter, which would place you upon an independent footing, and, with proper care of your cattle, would insure you a regular annual income.

INSPECTOR MCLAUGHLIN: My friends, Ralph Eagle Feather has handed me these clippings of a newspaper. They are from the Gregory County News, designated "Prosperity Number" and to have it more catching to the eye, more attractive, they have printed it on pink colored paper. These, my friends, are not actual values of land. This is to mislead. As Todd Smith said yesterday, some white men [25] are pretty smart. These advertisers and this newspaper want to bring more men into the country and expect to bring some tenderfeet, induced by these high-sounding advertisements. I would dislike to offer those men half the price they ask in these advertisements, for I know they would take me up quickly, but I am very glad to get this, because I want to show this to the Secretary and Commissioner.

STRANGER HORSE: Now we have judged and put all we want in writing and given it to you. This is the way I think about it. Some of our people here have no land. Some of our children from 4 to 5 years old have not land yet. This is what we have said in that way we want you to wait. That is what we want and when you get home speak this to the Great Father and appropriate some money and send someone here to make the allotments right away.

You came with this bill. We are not ready to enter into any agreement until these allotments are taken into consideration. Now we have been getting our Gregory County money for three years. I suppose the Great Father has the names of those who have got the money. Since we have got our pay these three years, a great many of our children have died and did not get their money. That is what we want to know, what are you going to do with the dead children's money? That is the reason we want to hold on a while. That is all I want to say to you.

HE DOG: Every time you come here, we all take good care of you and treat you well, and I want you to know that lots of these people have lost their children since you were last here. My friend, I will say that you have said some good words, both you and the Indians, but while we are waiting on our children's money we keep dieing, a good many of us are dead now. I am a man who has not yet got an allotment and I am going to wait until I get my allotment before selling more land. My friend, that is the word I want to give you. I want you to keep it. My friend, we are [26] Indians and you ought to have mercy on us. Since you went away from here the last time we have been looking toward you every year for our children's money to come. I will say this, that if you had paid the children's money at the time you promised, our hearts would have been good and if you came this way again we would have been glad to receive you. Now, my friend, that is what I have to say.

INSPECTOR MCLAUGHLIN: My friend, He Dog, made a remark that made me feel very pleased indeed. He said that I have visited your agency often and that you had always received me and treated me well here. That is very true and I appreciate it. I have a good many friends among the Sioux and there are no Indians, not even excepting those of the Agency at which I remained for so

many years, that I respect more than I do the Rosebuds. I know you people well, having been brought in contact with you so many times. My heart goes out to you people to meet you half way in every reasonable proposition that you make. I am very pleased with your work of last evening. Last night you remained up until 1.30 I understand, and instead of turning your backs upon this proposition and going home without considering it, you, at my request, met here last night and talked the matter over among yourselves and formulated this paper which shows good intention and much ability. There are some powers delegated to me in negotiations of this kind. They are limited. That is, I can go so far and no farther, but I feel and fully believe that we can come to an agreement. It may be possible however that before we can reach an agreement that will be satisfactory to both yourselves and to the Department officials, it will be necessary for me to visit Washington and confer with the Secretary and Commissioner and, if I should go there, I would want to have something pretty definite to take with me, and I would like very much if you people would select a committee of 10 or 12 to meet me tonight. We will spend this evening in some room and [27] we will see what we can accomplish in formulating an agreement. Your Agent will be with us and I think it advisable that you people consider this matter and select a committee, and we can then, in the course of two or three hours, accomplish a great deal. All we could do would be to simply arrive at something that would not in any way be binding upon you, but get it ready for submission to the full council when it is again reconvened. It could then be explained to all of the Indians that would be here and we could thus get a general expression from them. I will now leave you for a few minutes to consider the matter and will be in the Agent's office when you desire to have me return.

HIGH PIPE: We have a large Agency here and a good many people from 18 years up, and they told us to say something and thus gave us the power, so we said it. I think we should leave this matter until about Tuesday morning and then consider it again, because since I heard you were coming I have been here and I feel like going home tonight. That is all I have to say.

(To Agent Kelley) My friend, you sit there and draw your face down all the time and do not look natural. You do not laugh and smile like you used to.

AGENT KELLEY: I am thinking what can be done for the good of the Indians and I have their good at heart and am trying to think of some plan that an agreement can be made that will be to their interests. So if I appear serious that is my reason for it.

INSPECTOR MCLAUGHLIN: I will say to my friend, High Pipe, and to all those assembled here, that the request for adjournment until next Tuesday is very reasonable, and to show that I desire to meet you people in every reasonable way, we will adjourn until Tuesday, but I hope to have a good representation of you here then, and I wish you would appoint a committee to talk matters over with me in the meantime.

(Council adjourned at 4 P.M., until Tuesday morning, Dec. 1.)

[28] December 18th, 1906.

Thomas Flood, a progressive mixed blood of the Rosebud Reservation, reported this afternoon that, owing to this being beef issue day at the sub-issue stations, very few of the Indians were at the Agency and those had arrived were at Spotted Tail's house counseling among themselves, discussing the proposition submitted to them, in consequence of which it would not be advisable to convene the council until tomorrow, which was concurred in, and the meeting postponed until Wednesday, the 19th.

Council reconvened Wednesday, the 19th, at 2 P.M., with about 100 Indians in attendance.

INSPECTOR MCLAUGHLIN: (Louis Bordeaux interpreting) My friends, having again assembled after three days' adjournment, during which time you have been discussing the matter among yourselves, I trust that you have arrived at some conclusion which will enable us to proceed understandingly in our negotiations. I am now ready to hear what you may have to say regarding the matter, and would wish you to express yourselves freely so that I may explain every phase of the question not fully understood by you.

RED BULL: I want to say a few words before Hollow Horn Bear makes his speech. Some of us have given Hollow Horn power to speak for us and we have the names on this paper for whom he will speak.

HOLLOW HORN BEAR: My friend, I heard you were coming here some time ago. I thought this way, that I would see my brother today and that my brother had come here for my protection. Before I arrived, my friends here wrote something on paper and presented it to you. The people over 18 years of age who live with me have given me the power to speak for them. If they had not given me that power, I would not be occupying the floor and making this talk. What I want of you I expect you will agree to. That is the reason I came. We have treated with you in the past and then I stood with three-fourths of the people. I suppose you know that I aided you and worked for those past treaties. I was [29] thinking that I have a brother and when I want to talk to him I want to talk to him straight. Now I come here today, my friend, and I learn that some of our people have put something on paper and handed it to you, one of which I do not like and I will tell you of it. It is that the land shall be sold at auction, that is what I do not like. I do not want that.

The Great Father wants us to make an agreement. I want \$5 per acre for the entire tract and I want the Great Father to pay for it. I want the Great Father's council to pay for this land at \$5 per acre straight, to guarantee it. I do not want to go above this \$5 per acre or to go under it: \$5 per acre for the entire cession is what I want. If this can be done, it is what I want. I do not want the Secretary to have entire control of the proceeds as provided in the Burke Bill. My Agent will be here and I want the agreement made so that the money will be paid in and then I can come to my agent and tell him what I want from the proceeds of this land. That is what I want. I want it to go through my agent here. If I need cash, my agent would ask for it and get it for me. There is something more. Some of us have children at our homes and I want the money so that we can get it for them. I want the money to be placed in the U.S. Treasury the same as former treaties were made. I want to say one thing more. In the Gregory County land that we sold, we missed one issue of cows and lost a calf from each cow by it. In the second year we lost the increase of the calf again. We want the Great Father to pay for these calves which we lost. The value of the calves if \$5 per head. I want to say that if this is to become a law, we want our children who have no land to first have allotments and another thing I want is that the heirs of persons who have died since the Gregory County lands were opened be paid these shares without the expense of going through the probate courts, the cost of which is more than many of them would receive. The Great Father tells us that we must fix that in the Court, but we are poor and not able to do that and we [30] wish that to be paid here at the agency. The money was due to those dead persons and I want the Great Father to send it to my agent here and he can pay it to the parents or heirs. There was many

complaints against the Gregory County opening. The minor children's money has been withheld for them and I want the Great Father to pay that to the parents. I do not want any change from paying to parents the money of their children, that is the reason I tell you this. The Great Father can attend to this. I do not want any change in this, as I want this very much, and that is the reason I tell you of it. My friends here thought of other things which they have spoken to you about and I am not going to mention them as you already know them.

As I told you before, those young men have given me the power to speak for them therefore, I believe I have spoken straight not forked. That is all.

INSPECTOR MCLAUGHLIN: In reply to my friend Hollow Horn Bear, I desire to say that there is very little difference in his proposition and what I am prepared to consider. The principal difference is that he demands \$5 per acre for the entire cession and for the Government to guarantee the payment of that price. As to that, I wish you to clearly understand that Congress for the past five years has absolutely refused to consider any agreement for the cession of Indian reservation lands which stipulates a lump sum payment or binds the Government in any way to purchase the land or to find purchaser for it: The Burke Bill, which I read and explained to you at our first meeting, provides \$5 per acre for all land taken the first three months, \$4 per acre for all land taken in the following three months, and \$2.50 per acre for all taken after the first six months and \$2.50 per acre for the School section. If that land in Tripp County is as valuable as you all say it is, there is no doubt that every acre of it will be taken in the first three months at \$5 per acre, the price stipulated in the Bill. I do not, however, expect that it will all be taken [31] in the first three months, but all the good land will undoubtedly be taken in the first three

months, there is little doubt of that. The rush will be as great as when your Gregory County lands were opened and all land suitable for farming purposes will doubtless be taken the first three months at \$5 per acre. You must bear in mind that this agreement provides for the opening of Tripp County the same as your Gregory County lands are being disposed of. That the man who files upon a tract of land has to pay one-fourth of the purchase price down. The remainder is divided into 5 annual payments, payable at the end of each year for 5 years. For instance should I file upon a piece of that land and pay \$5 an acre for it, I would have to pay \$1.25 per acre down. Major Kelley here might come along and say "I will give you what you paid in and something more if you will let me have that place." Should I sell it to him, he would then have to pay \$5 per acre for it as I had done, paying \$1.25 down same as if it had never been filed upon. No matter how many payments or how much money any man may have paid on his homestead, if he has not received his final patent and relinquishes in favor of another person, that money all goes to your general fund in Washington and the man who purchases it has to pay the same price for it that the man who first filed upon it did.

That land which I negotiated with you for in 1901, for a lump sum consideration of \$1,040,000, will, under the plan that it was opened, realize for you people over one million four hundred thousand dollars, considerably more than \$800,000 of that amount has been paid into the Treasury already, with three payments yet due on most of it, and a portion of the land has not yet been filed upon or disposed of. It now looks as though there will be \$1,600,000 from your Gregory County lands, or about \$500,000 more than you would have received had the lump sum that I agreed with you for been paid to you. Major Kelley has a statement here [32] which I will ask

him to read so that you may understand it fully. I mention this that you may know that this system of disposing of your lands is the best that can be devised and and insures to you people every dollar realized from your lands.

As to your Tripp County lands, you are sure of getting \$4 per acre for all filed upon the first three months, \$4 per acre for all filed upon the next three months with the benefit of all those who may relinquish their entries in favor of someone else.

As to paying interest on money that is placed to the credit of Indians in an open account which is being drawn upon from time to time, such has never been done by the Department to my knowledge and I doubt if Congress would authorize it. A permanent fund can be placed at interest, but open accounts cannot. All permanent funds usually draw interest from 4 to 5%, whatever is agreed upon. The Great Sioux Reservation fund is drawing interest because it was placed to your credit in the U.S. Treasury to remain there intact until distributed among you. A provision might be made in the agreement that as soon as the monies paid in had reached a stipulated amount, to place it in the U.S. Treasury as a permanent fund at interest. That is, when the sum collected reached say half a million dollars or a million or whatever was agreed upon. It might be placed in the Treasury as an interest bearing fund, but to have it draw interest and remain an open account, I doubt if it would be allowed.

With these two exceptions, my friend Hollow Horn Bear has made a very good talk. His speech was quite logical but I thought best to explain these two questions while fresh in your minds. That is, as to interest on money other than a permanent fund, also in regard to the \$5 per acre for the entire cession with a guarantee of the Government to find purchasers for the land, which could

not be incorporated in an agreement and [33] therefore cannot be entertained. I would state that if you people wish to have the proceeds accumulate until sufficient has been collected to create a reasonable permanent funds, say half a million or a million dollars, I would be glad to provide for it to draw interest as you request. You should now understand those two questions and I will ask your agent to read a certain item from a newspaper which he has, it being a statement of your Gregory County land sale which Congressman Burke obtained from the Department and the figures are undoubtedly correct.

AGENT KELLEY: This is just as Mr. Burke told me at the time he was here. It is now published in a Gregory County paper and I will read it from the paper. You can see that the land is bringing more money by considerable, as our friend, Inspector McLaughlin, just told you, than it would the other way. The amount of land disposed of is the ceded portion of the Rosebud Reservation and amount of money received therefor, up to Dec. 31st, 1905 (that is one year ago) there have been made 1881 homestead entries of the \$4 class, that is, over three fourths of all the homesteads that were made down there, over three-fourths of them at \$4, that is the highest price, you know. That is 300,960 acres. Do you all understand that?

VOICES: Yes.

AGENT KELLEY: 420 entries of the \$3 class. That is, 21,898 acres. 304 entries of the \$2.50 class, that is, just a little over 38,000 acres, and there were 29,543 acres given to the state for school land, for which you received \$2.50 per acre. That makes \$73,858.75 for the school land. The money for these school lands was paid into the Treasury by the Government for the Indians. Since Dec. 31st, 1905 and up to September 30, 1906, that was 9 months, there have been 240 more homestead entries

made of the \$2.50 class. That leaves 450 homesteads of 160 acres each not taken. The whole amount of money received [34] and paid into the Treasury to the credit of the Indians up to September 30, until three months ago, is \$827,707.72. That is already paid in, up to Sept. 30 and that is nearly three months ago.

HOLLOW HORN BEAR: I have said some words to you, my friend, as you have stated two things regarding them. It is impossible for us to fix this up at this time. In the past, all treaties our forefathers made, the Government always paid for the land, up to the Crook treaty. Now the Great Father is not paying for the land himself. My friend, whatever is said in our paper you take it to Washington and have Congress fix it up this way. It is like if I want to buy your watch, and after buying it some other person comes along and says I will pay that purchase price for you. It would be the same as those settlers going to pay for this land. I am afraid of that. The Great Father should pay for the land himself. What I say here you can present to Congress and if they do not like it why just let the land alone. Those people who bought our Gregory County land have not paid for all of it yet, and if they had paid for it all and you asked for another piece of land, we would not be afraid of it, but they have not paid for it in full, but you ask for more and we are afraid of that. You just told us that there is much of that money due yet. The Great Father has not yet paid for some of the land that Gen. Crook bought. He has got us into a tight place. I promised the young men that I would say this and I have said it and I do not want to cut up my words.

INSPECTOR MCLAUGHLIN: My friends, I must correct my friend Hollow Horn Bear again. You are receiving payment for your Gregory County lands exactly as provided in the act of Congress opening that tract. The

first 1881 homesteaders who entered and filed upon that land paid \$4 per acre for it, according to this statement your agent has just read. They paid \$1 per acre of this down at the time of entry and the other \$3 per acre was [35] divided into five equal parts, being 60¢ per year for five years.

The Government in your Gregory County cession, as trustee for your people, disposes of your lands, collects the money from the entrymen and places it to your credit, every cent paid in being promptly placed to your credit. The Government is a just and fair guardian and will see that every one of those homesteaders pays for his land in full before he acquires a clear title to it. You will receive every farthing that the land brings, under the system which it was opened under, and the same system is provided for in the Burke Bill, but the prices are much higher, commencing with \$5 per acre, then \$4 per acre and the lowest price \$2.50 per acre. The relinquishment of some of the claims by the entrymen and the filing upon them by other parties as I have heretofore explained, increases this fund materially. You have an opportunity to be a party to an agreement for the opening of your Tripp County unallotted lands, and having explained it repeatedly, you must all know that the right is vested in Congress to open Indian lands without the consent of the Indians. But the Secretary of the Interior and Commissioner of Indian Affairs, who are charged with the care of the Indians and custody of their funds, are desirous that Indians be consulted and their consent obtained if possible and this is the reason I was sent here to submit the question, with the hope that you would accept a reasonable proposition. Hollow Horn Bear has said, "Take this back and let Congress do as it may choose with it." That is not the right feeling it is not the right spirit. You should not become sad-hearted over it.

You should think out what would be for your best interests and meet the wishes of the Government in a reasonable way. It is difficult to find 50 or 100 persons of one mind on any proposition in the beginning, but by discussing and considering the question carefully, they may come together as one mind. The question before you is one of great importance to you people, and as I stated in council a few days ago, I am [36] willing to concede anything reasonable to meet your wishes that I can recommend to the Department. I would be grieved to be obliged to report to the Secretary that one fraction wanted it a certain way, another a different way and some others did not agree with either of the other two factions. I want you to agree on something definite so that I may be able to aid you.

HOLLOW HORN BEAR: I thought you asked the question as to whether we would sell the land or not. I thought that was your question. I understood you to say that you would take those words home and let Congress do as they wanted to.

INSPECTOR MCLAUGHLIN: I understood that you wanted me to take what you said back with me to Washington and if Congress did not accept it, to let them do as they chose.

HOLLOW HORN BEAR: I said this way, at least it is what I intended. "You take our answer and requests back with you and present it to Congress and if Congress does not act on it as I say, leave the land as it is. I did not say that the Great Father can do everything to suit himself or the Great Father's Council. I am not sorry for what I said, but if the Great Father's Council takes that land away from me without my consent, I will be very sorry over it. Our forefathers used to make treaties and by making treaties we lived all right without any trouble, and I wish to make this treaty, because when we are all

dead the white people would have no trouble in taking all the lands. I did not come from any place as a prisoner, but was born and grew up here. I did not come here on somebody else's land and was not a prisoner when I first came here. We thought this agency was a honorable place, respected by the people and the first party to make treaties of peace, and I always considered it so. Our forefathers made a treaty with the Great Father and signed an agreement and we had peace. The treaty of 1868 mentions an article that says that the consent of three-fourths of the Indians to an agreement would be necessary to have it become a law. If [37] three-fourths did not sign the treaty there would be no treaty at all, and I do not believe that anybody is going to force me to give up my lands. Of course if we do not want to sell these lands and if the Great Father takes them against our wishes, I suppose he will take the rest of our land too. What are we going to do about them? You have explained all about Gregory County treaty, word by word. We have been paid something each year for the last three years, but we have been suffering. We ought to be paid in full. The Great Father paid for those school lands. The money paid us did not come from the settlers, it was from the school lands alone. That is what I think. Those settlers asked Congress to let them have an extension of their payments for one year and I understand that it was granted. I thought this last payment was going to be a double payment, but it was not. In our treaty it never mentioned that our minor children's money should be kept back in the Great Father's hands, but it is. It has been tied up. All entitled to a share of the Gregory County money have to take oath before they get payment, but it was not so in the past. We never did that before. When we made that agreement we were told by you that each and every one of us, grown people and

children, should have so much money for 5 years. We thought we made a good agreement, but we were disappointed and our young people are feeling bad over it. Some of those who signed that agreement get very little benefit from it, as some of their children have died and got nothing from it. They are standing that way now. This Burke Bill, if it goes through, says that all payments are to be in the hands of the Secretary. That is another thing we are afraid of, because of our treatment in the Gregory County payment. Our forefathers made such a treaty as that and they give us some ploughs that we did not need, so we used them to make bridges on the creeks. The reason was that the ploughs were no good. They ought to give us something better than that. It is this way, my friend, I told you that I like you [38] and regard you as a brother. I understand it this way, that Congress always sends you here on business that they do not want any mistakes made in. You are not to blame for this, Congress is to blame. My friend, I like you and now you can go home and tell them what we said and if it cannot be done as we want, let our land alone. Now I talk all right as I respect you, but Congress is the one who wants to make me trouble by taking my land away without cause. Of course there will be trouble. I told some of those young fellows to go and do something for themselves, but they would not listen, they said, I am not going to stay here, as the Great Father is going to take our land. I am not going to stay here myself. I am going off with a show. Of course, whatever my friends here and myself have said I want you to take that home and show it to the Great Father's council. I am not sorry for anything at all myself. It is the young men here whose complaints I am relating. I stand here looking at them and I believe they tell the truth. That is all.

INSPECTOR MCLAUGHLIN: There was a question raised a while ago that I omitted to answer in regard to the cession of your lands in the agreement of 1889, the so called Crook Treaty. The statement was that you had not received payment for those lands yet. I wish to tell you that every dollar that your lands brought under that agreement has been placed to your credit and when all of the Sioux Reservations have been allotted, a general settlement will undoubtedly be made. The money has been received and placed at your credit for every acre of that land. My friends, I am not here of my own volition. I have been sent here by the Secretary of the Interior to present this matter to you. My heart goes out toward you people and were it in my power to grant you everything you ask in this matter, I would be inclined to do it, but I am quite familiar with land matters and Indian land matters especially, and I know about what the Department would be willing to approve and Congress be likely to ratify, and wish [39] to guide you along those lines.

My friends, I know and many of you know, that the sentiment prevailing throughout South Dakota and throughout the States bordering on South Dakota, is for the opening of Tripp County lands, and that a pressure is being brought to bear upon the delegation from this state and from the adjoining states to bring that about during this session of Congress. There is very little doubt in my mind but that the legislation necessary to open Tripp County lands will be enacted before this Congress adjourns, the 4th of next March, and as your friend and a person who is willing to do anything within his power to meet your wishes, I wish you to unite upon something definite which I can present to the Department and which the Department officials can recommend to Congress. I want you to get together tonight because I wish you to meet me again tomorrow. The time is passing

rapidly. I have been here a week and over, and there is no necessity for us to continue our councils indefinitely when we should be able to reach a conclusion in one day. I would like to know your minds in relation to the Burke Bill, which I read to you, and the changes, if any, you desire to have made in it, and have you arrive at something definite that I can take back to Washington with me and show to the Secretary and Commissioner together with the minutes of our councils which will show all that has been spoken by myself and by your speakers, that they may thus know the feeling of you people and your desires.

My friends, in considering this matter among yourselves and presenting your conclusion to me, your demands should not be unreasonable. They should be along lines that would give me an opportunity of making an argument for you before the proper authorities.

STRANGER HORSE: I want to say a few words in regard to what you have said. Of course you are always in a hurry and keep urging us and you are quite right as it seems that we cannot come [40] to a conclusion in anything. The Indians are Indians and they have no understanding and they cannot understand anything at all. Beginning now, you ought to give them several days council among themselves and they would have something done at the end of that time. We concluded to make a statement of our wishes and present it to you. That is as far as we can have an understanding. The best terms we have to state we have told you now. Take home what we have said and then come back with it if the Department and Congress is willing to accept. It will be easily understood by the Great Father. That is what I have heard. I always get news from there. (Hands clipping from newspaper in relation to sale of Big Pasture lands on Kiowa and Comanche reservation, Oklahoma) There is

one thing we insist upon and we will stand by that. There are children who have no land and there are some of these Indians who are not allotted yet. You go home and tell them to send some man out here to allot those children and other persons who have no allotments and then we will see about selling Tripp County. We are a big tribe here and it is impossible for us to go around and ask everybody to get their consent in haste. I myself have been here two weeks now and I am tired. You came here for this one purpose. I had a good many things to think of, but now all my thoughts are gone and I am tired of it. My friend, this will be our last council and whatever we conclude today we are going to respect and have you take it home, so we have done now and this is the end of it. You promised us you would help us and we presented a paper to you and our wishes are on that paper. They are the wishes of the people. We approved of what is on that paper and we cannot say any more.

INSPECTOR MCLAUGHLIN: In reply to my friend Stranger Horse, I will say that I wish to have you fully understand without any mistake about it, that the allotment of the children, as also allotments to those who have not yet received allotments and to persons whose present allotments are to be relinquished and other [41] allotments made to them instead, will be provided for in any agreement that we may enter into and that before Tripp County is opened. That will be distinctly understood, and the privilege of taking their allotments within the boundaries of Tripp County will be provided for in the agreement.

HOLLOW HORN BEAR: I suppose if we come to any conclusion in this matter and we let you know in the morning, that will be the the end of the council.

INSPECTOR MCLAUGHLIN: My friends, I do not want to hurry you in this matter, but I feel that we are

consuming a great deal of time unnecessarily and after our talk today, by counciling among yourselves tonight and meeting me in the morning, we should be able to reach a conclusion tomorrow. There are many things that you may not understand which your agent or myself could make clear, and for that reason, I think, more could be accomplished here with us to explain matters than by counciling among yourselves. My friends, you say that you presented me a paper the other day and will stand on that, but there has been a great deal of talk today very different from what is stated in the paper, and I would like to know if that paper is still what you wish to stand upon, or if there is something that you want to change in it. There are a great many things in that paper that are sufficiently clear, but there are others too indefinite, not clear enough to submit to the Department in their present form and that is why I want to meet you again tomorrow that we may arrive at some conclusion after you have councilled among yourselves tonight.

HIGH PIPE: My friend, it is over two years since Gregory County was opened. Two years is a long time.

INSPECTOR MCLAUGHLIN: Two years is not very long. It soon passes round.

HIGH PIPE: If it is so short wait until two years passes and give our children who have no allotments lands and then we can talk about Tripp County.

INSPECTOR MCLAUGHLIN: As I told you before, Congress [42] will not wait that long. Any agreement that we may enter into providing for the opening of Tripp County will protect your children by allotting them. The legislation will be enacted providing for the opening of Tripp County as soon as the allotments are made.

HIGH PIPE: I want to adjourn this council until next Monday that we may council among ourselves in the

meantime.

INSPECTOR MCLAUGHLIN: In reply to my friend High Pipe, I will say that all the people are here that are needed to consider this matter and I cannot consent to another adjournment of four days. I want you to talk this matter over among yourselves tonight and we ought to conclude our council tomorrow. I am not going to require you to sign an agreement at this time, simply to arrive at something reasonable which I can submit to my superiors.

HIGH PIPE: Well, we will council to tonight and meet you tomorrow morning.

(Council adjourned at 5 o'clock, to meet Thursday, the 20th)

(Council reconvened at 10 o'clock, Thursday, the 20th)

INSPECTOR MCLAUGHLIN: My friends, I have learned that you were in council last night until after 2 o'clock this morning, and am pleased to see you so promptly here this morning. I hope you are now prepared to submit an answer in relation to this matter. I am ready to listen to you.

HOLLOW HORN BEAR: Whatever we are going to say we have printed here on this paper. I am going to say one word on this paper. That land belongs to us. As you say that the reservation may be opened without our consent. Therefore I want to say something about it. I can say this. This land belongs to me and I will ask a price for it whatever I think is best for me. We know this reservation is going to be opened. We all know that in Indian Territory there was some tribe that sold land and they asked a certain price and they would not grant it to them and they [43] went to work and opened their land without their consent, and the same was taken to the Supreme Court. After all the Indians were paid what they

demanded. I am going to hand on to what I ask for my land. There are words we have put in writing. (Hands Inspector paper)

INSPECTOR MCLAUGHLIN: Am I to understand that you substitute this paper for the one you prepared and handed me last Saturday?

VOICES: Yes.

INSPECTOR MCLAUGHLIN: And that you want the paper which you handed me last Saturday withdrawn? Is that understanding correct?

VOICES: Yes.

STRANGER HORSE: Some things in the first paper are in this one so we take the first paper back. All that we want is included in this paper. We withdraw the other one.

INSPECTOR MCLAUGHLIN: In relation to your first and second clause in this paper I wish to say that \$6 per acre, as demanded by you herein, is a very large price, and that \$5 per acre for the second choice is altogether too high, and the remainder at \$4 is exceedingly high. I fear that Congress may not consent to this \$6 per acre price even for the first choice, and you are well aware that the great bulk of that land, the desirable farming land, will be taken when the rush takes place. All of the good land in the first three months. The great bulk of your lands will bring the highest price that may be provided for in the act. As I stated to you the other day any questions that is being discussed between parties upon which they cannot come to an agreement in the beginning, may be affected by a compromise, each party conceding some particular point. You demand \$6 per acre in this paper. I am willing to leave this remain for the present with the understanding, however, that in case the Department should disapprove and Congress refuse to ratify it that a compromise as [44] to the price might be

effected by agreeing upon \$5.50 per acre for the first selection. I will submit this paper and do everything I can to have that \$6 per acre accepted for first choice land, but cannot promise that, for the second selection, all that you should expect, and it is very reasonable, would be \$4 per acre instead of the \$5 demanded and I doubt if a higher price would meet with approval.

If such meets with approval, the price would then be \$6 per acre for all taken in the first three months and if this price cannot be secured, you should consent to split the difference and make it \$5.50 per acre. Then \$4 per acre for the next three months, and all after that including the school sections, \$2.50 as provided in the Burke Bill. A clause could be inserted as your request providing for the sale at public auction to the highest bidder of all lands remaining unentered at the end of four years from the date of opening. I submit this for your consideration. \$5.50 per acre for the first three months, \$4.00 per acre for the next three months and \$2.50 per acre for the school lands and all entered after six months from date of opening. This would grade the price regularly, dropping \$1.50 each time, from \$5.50 to \$4.00 and from \$4.00 to \$2.50, being \$1.50 each drop, to equalize the value of the selections.

Do I understand you, my friends, that you want this million dollar permanent fund to be provided for from the first money received from the sale of your Tripp County lands, that is, as soon as the amount received reaches one million dollars do you want that placed in the Treasury as a permanent fund to draw 5% interest?

VOICES: Yes.

INSPECTOR MCLAUGHLIN: The interest money would become due annually and could be paid out per capita, but what disposition do you want made of the remainder of the proceeds from the sale [45] of that land

after this million dollars is deposited. This is to be considered and I wish to explain my views. I understand from the memorandum which you handed me that you desire to make application for this from time to time through your agent. That is, after the million dollars has been set apart. This money will be coming in and placed to your credit from the time the first entries are made up until the last acre of the land is disposed of and proceeds paid in. Your agent and myself believe that three million dollars at least will be realized from your Tripp County lands at the prices provided by the Burke Bill, one million dollars of which will be drawing interest and the money coming in from time to time will be available for such disposition as you may make provision for.

HOLLOW HORN BEAR: How many years will the annual payment be, apart from this million dollars?

INSPECTOR MCLAUGHLIN: That is something we cannot calculate upon, as the money will keep coming in until the lands are all sold, but I should judge that by putting a clause in the agreement that the land remaining unentered at the end of four years from the date of opening shall be sold at public auction, that at the end of 8 years from the opening the money will be paid in. It is impossible to state definitely how long that would be, as there are so many changes liable to occur, but every change by relinquishment that is made, you people would be gainers. I should judge that the time would be from 8 to 10 years before all collections were made.

Regarding the permanent fund referred to, there might be a provision inserted by which ten percent of it might be drawn upon by a majority of the Indians petitioning for it under certain conditions and ten percent of \$1,000,000.00 would be \$100,000.00, which amount should not be exceeded in any one year. I wish to further say that it is a question whether or not 5% interest would

be allowed on such a permanent fund. The last two agreements that [46] I made with Indians providing for an interest-bearing fund, 4% only was allowed. However, I will submit your request as to the interest on that permanent fund with the hope that it may be allowed.

Article 8. You demand that the Government pay \$4 per acre for all land taken for school purposes. My friends, that is one clause that I think you should change to \$2.50 per acre, for the reason that, as I explained to you in our former councils, this is for the common schools of the state of South Dakota and whilst you old men may not need it during your lifetime, your children and grand children will be benefited by it. It provides for free district schools and it is our magnificent system of public schools which makes the American people a great people, and when your young men and women of the coming generations take the stand alongside of the whites, they will derive these benefits just the same as the whites. The question of price for these school lands, only section 16 and 36 in each township, amounts to very little comparatively, and your concurrence in this will show your good will and when taken in connection with that which you are to receive for the lands to be homesteaded, you will get a good average price for the entire cession.

Articles 9 & 10, providing for allotments to your children born since Mar. 3, 1899 up until this agreement is ratified, and the privilege to those of you who have sandy or otherwise worthless allotments to take other lands in lieu of them on any portion of the reservation, including Tripp County, can be incorporated in the agreement.

The 11th item is, that you want the Lower Brule agreement to be carried out, that all children when they become 18 years of age receive wagon, horses, etc., and

that your wives receive same. This, like those two sections, 5 & 6, which I spoke of, are not pertinent to the question before you. My friends, I have explained that matter to you on numerous occasions during our former [47] negotiations, and I have again explained it to you during these negotiations. I will leave it in your memorandum simply that attention to it may thus be called. The same applies to section 12, wherein you ask consideration and action in all cases where heirs are seeking to obtain the portion of land that would have been allotted to deceased parents and relatives had they lived. You can undoubtedly get a ruling of the Department as to this, but I could not include it in an agreement.

Section 13. This is a very good suggestion and I am glad to have you submit it, but it cannot be inserted into the agreement. That instead of working on the roads, etc., you want it brought about that the greater portion of the \$1.25 per day labor shall go toward improving your allotments and the benefit of same be put into your allotments according to the treaty of 1876, the so-called Black Hills Treaty.

My friends, one thing that I think of very great importance you have overlooked entirely, and that is the consideration of the question of additional stock cattle. With the exceptions which I have mentioned, there is nothing very unreasonable in the proposition you submit, but the sections irrelevant to the question should be eliminated. If you have anything further to say, I am ready to hear it.

HOLLOW HORN BEAR: We have mentioned what we want in that paper and we have nothing covered up. I know what we want. We want to apply for what we want through our agent. We might ask for material for houses, we might ask for teams and then again we might ask for cattle, but we want to ask for what we want through our

agent. There is something now that may kind of put you into a tight place and I ought to have asked you about it yesterday, but I did not. We want to put this million dollars in a permanent fund for ten years. Of course the interest on that will come to us yearly, but I want to know what the proceeds of this land will be, how much there [48] will be besides this million dollars.

INSPECTOR MCLAUGHLIN: I answered that already and stated that it would be impossible to tell until the land is all disposed of. There is one thing sure, you will get the full price provided by the Act. All the land will be disposed of and every cent collected deposited to your credit, but it is absolutely impossible to calculate with any degree of accuracy what the amount will be until the land is all disposed of.

HOLLOW HORN BEAR: The interest on this million dollars that will be paid to us, how much will each person get each year.

INSPECTOR MCLAUGHLIN: \$50,000 interest annually would give you about \$10 per capita.

HOLLOW HORN BEAR: If we get the interest money and get the other proceeds of the land outside of this million dollars, the Indians may ask for cash. Of course we will want to buy property and such articles as we may need, that is, by petition through our Agent. My friend, I call upon you as a brother and of course you put down what we say and take it home with you and help us as a brother. Some of the agreements in the past which we made have not come up to our expectations, so we have included them in this paper which we handed you.

INSPECTOR MCLAUGHLIN: We will now adjourned until after dinner and during adjournment I wish you would have the changes made in your proposition which I have suggested, making no change in the body of it, but have it clearly convey just what you desire.

STRANGER HORSE: in our council last night we put these articles down just as they came and supposed that we were putting them down right. Therefore fix it up now and adjourn the council.

[49] INSPECTOR MCLAUGHLIN: It should be rewritten.

(Council adjourned at 12 o'clock, M., until 1 o'clock P.M.)

Council reconvened at 2 o'clock, P.M.)

INSPECTOR MCLAUGHLIN: My friends, I have read your memorandum very carefully, have read it over and over and studied its provisions, and am glad to know that we are coming nearer an understanding. To begin with, and to place myself on record so that there will be no misunderstanding between us, I wish to say that if I cannot succeed in getting \$6.00 per acre for the first three months entries, I feel that you ought to authorize me to compromise by splitting the difference. That would be \$5.50 an acre for the first three months. For the second selection it would be useless to have the amount exceed \$4 per acre. I am confident that this would be all that would be acceptable to the Department or Congress and it would be giving you a good price for the reason that all the desirable tracts would be taken at the first price. After six months, when the third selection comes in, together with the school sections, to be \$2.50 per acre as provided in the Burke Bill. Your request that all lands remaining untaken at the expiration of four years shall be sold at public auction to the highest bidder is not unreasonable and I believe that it can be adopted.

Your third article in relation to setting apart a permanent fund, I will submit as it is, and I am in hopes that it will be favorably considered by the Department. Your fourth item that the remainder of the proceeds after the million dollar permanent fund has been de-

posited, shall be expended for your benefit upon application by a majority petition through your agent upon your stating what use you desire to make of this money and the agent to recommend same or not, just as he sees fit. That is not an unusual request and I will submit it.

The seventh article, in relation to the payment of the [50] minors' shares to the parents for the Gregory County lands, I will submit to the Department and request instructions regarding it.

Your eighth article here is in relation to those school sections which I have already explained, but will further state that if I were one of your people with my family and all my relatives here, I would feel that \$2.50 per acre was ample for the school lands and I would not think of asking any more for them. As I have heretofore frequently states, your articles 9 & 10 are quite acceptable. Both refer to allotments which will be made before the lands are opened to settlement. Your 1st, 2nd, 3rd, 4th, 7th, 8th, 9th & 10th articles are the essential parts of the agreement, and form a basis upon which an agreement may be formulated. The 5th, 6th, 11th, 12th and 13th of your articles cannot become any part of the agreement but may remain in the memorandum for consideration by the Department. The 5th is where you ask payment for those calves which you claim to have lost by not receiving your cows as early as promised. The 6th is that you receive the shares of deceased beneficiaries without being obliged to go to the expense of a long trip to Oacoma and probate the estates. The 11th is the matter of what you call the Lower Brule treaty. Your contention as to that is not based upon any provision of your agreement for the admission of the White River Brules, but it was stated by both myself and your Agent at the time, Doctor McChesney, in council while negotiating that agreement with you. I have explained that so many times to you

people that you should now understand it, but let it remain in your paper to call attention to your contention again. This 12th article whereby you ask consideration where heirs are seeking to obtain the portion of land that would have been allotted to deceased parents and relatives had they lived. That is a question of law as well as of Department decision and that is something of course that I could not include in the agreement, but it is here for them to see. I would like to have a Department ruling upon that and the Indians of the Sioux reservations notified so that they might [51] know the decision and not worry further over it.

In regard to working on the roads, referred to in your article 13, that the greater portion of the \$1.25 per day labor be expended in improving your allotments according to your treaty of 1876, the so-called Black Hills treaty, and that is something which I would very much like to see adopted myself. But these sections of your memorandum which I have spoken to you about, viz, 5, 6, 11, 12 & 13, cannot be incorporated in the agreement, but they will go forward to the Secretary and Commissioner as you have handed them to me. As I told you the other day, my friends, a compromise means a concession by both parties to a transaction, and a concession by the Government, as requested in your article 7, would be quite a concession should the Department consent to the payment of minors' shares to the parents of the children. Under the circumstances, I am going to recommend that for your Gregory County cession, but cannot promise that it will be incorporated in the agreement. I will do the best I can and am in hopes that when I explain the matter to the Secretary and Commissioner they will accept it. I regard it unadvisable to draw up any agreement or try to obtain signatures to it at this time, believing that it is necessary for me to proceed to Washington and lay this

whole matter before the officials of the Department and explain it fully to them as I now understand it, before urging you further in the premises. It would be nonsensical for me to make a trip to Washington without some definite proposition from you people, and this is why I insisted upon you people getting together last night.

My friends, I want you to remember what I have said in our former councils, that the Department is very desirous that you people be a party to an agreement which will provide for the opening of your Tripp County lands. The Secretary and Commissioner do not wish to have the lands opened up by Congress without your concurrence. We have practically agreed upon everything excepting [52] one thing. That is the price of the land and I wish to put the question to you very clearly so that we may understand each other fully as to that. I am going to submit this just as it is and if the Department accepts it, I will be very glad indeed, as it would then be recommended to Congress. If not acceptable, and I find that the Department officials are opposed to it, may I say that you will accept \$6 an acre for the first three months and for the other periods mentioned in the Burke Bill, as provided in said Bill? Your agent has just been figuring what your Tripp county lands would probably bring at these prices and both of us went over the figures together and at those prices your lands when all sold and everything brought in, will come very close to \$4,000,000.00 at the prices I have stated. If, after this is submitted to the officials of the Department and an agreement is prepared along those lines to meet your wishes, I would undoubtedly be sent back here to obtain the signatures of the Indians and I would not wish to return here with something that would not be accepted by you. Your demands in every respect as written out in that paper with the exception of price are not unreasona-

ble but the price is something I know will be the stumbling block at Washington unless you leave it at \$6.00, \$4.00 and \$2.50, and whilst I would do the very best I could to have the \$6 remain in the agreement, still, as I have said before, that may be rejected too and we might have to compromise and consent to splitting the difference, between \$5.00 per acre and \$6.00 per acre, by getting \$5.50 per acre for the first three months. I would now like to hear from you in relation to this proposal. I regard this, on the whole, an excellent price. Some of you have stated to me that the average price of inherited lands sold in Tripp County the past summer is \$6.75 per acre. You must bear in mind that those were choice pieces and many of the Tripp County pieces offered for sale were not bid upon. The Agent says that there is much of this land that was not sold because the heirs would not accept the bids for the reason that they [53] were not as high as others on adjacent land that was sold. The Burke Bill provides for the sale of every foot of the land and you ought to bear that in mind. Everything will be disposed of.

HOLLOW HORN BEAR: I am going to say this. Whenever I make up my mind to do anything and say anything I ask very strong for it. While I have no power when I want anything, I always try to work and do the best I can. It reminds me of when I was young. I used to be in fights and battles and I never depended on anybody but myself. Whenever I meet with a thing of this kind I always take it into consideration and try and consider it the best I know how. You must bear this in mind. The people of this reservation are not protecting you in naming a low price, but expect me to speak their minds. I think that you ought to say that you want to save money for the Great Father, that is why you ask us to accept \$2.50. For that reason you should say, let us put this at

\$5.50. Let it stand there, and I should have thought you would have said this instead of putting it at \$4. Make it \$4.50. In that way you would be saving a dollar for them. I am alluding to the school lands about which we have mentioned before. You take one off there and split it in two and divide the difference. It seems to me that you have this subject before you and you should put this paper before Congress, you want me to kill myself talking before it goes out of here. You can see yourself that in your proposition there is some parts that you have forgotten to bring with you. Those men who have sent you here are smart men, they are wise men, and they have sent you here with an article that has no point to it. Therefore we have to make our own agreements here. My friend, this is the last I am going to say. I have two horses here that have not had anything to eat for four days and this will be the last you will hear, me say. If it was in the summer time I would try and keep courage and stay here. I am on the point now where I am liable to slip away and leave you and when I do that, you will [54] not see anybody else here. The men that came here with me are most all gone now. A great many young men are depending on me and that is why I have kept courage and stayed here as long as I have. This is all I have to say. If you have anything further to say you can say it, then I am going home.

INSPECTOR MCLAUGHLIN: Do I understand my friend Hollow Horn Bear, that the figures which he demands are \$5.50, \$4.50 and \$1.50? Is that how I understand him?

HOLLOW HORN BEAR: That is the way I want it done.

INSPECTOR MCLAUGHLIN: Is that the wishes of each and all of you?

VOICES: No.

INSPECTOR MCLAUGHLIN: I would like to call for a vote on that. All who are in favor of that signify the same by raising their right hand. (Nobody moves)

My friends, I wish to state to you that in case I go to Washington at this time, I go on my own responsibility, without any orders to go in. I may therefore be reprimanded, but I feel that the importance of this case justifies my going, and I hope to be able to satisfy the Secretary that a personal conference was necessary to present this matter just as it is and as you people feel regarding it, and in such a way as I could not possibly do by correspondence. I would not be justified in making such a trip unless I could take something with me that the Department would be likely to concur in and Congress ratify. It is my desire for you to have a voice in concluding this agreement that makes me so anxious and urgent in this matter.

In order to ascertain the sentiment of the council, all in favor of the change in the price as stated by Hollow Horn Bear, will manifest it by raising the right hand.

All present raised the right hand with the exception of five and when the negative vote was called for only two voted No.

INSPECTOR MCLAUGHLIN: My firends, I accept this vote [55] as your decision and I will present this just as I have stated to you and shall do the very best I can for you. I wish to express my appreciation of the nice, courteous treatment I have received here from you people and the orderly manner in which our councils have been conducted. In closing our council and bringing it to a close for the present, it is simply adjourned until such time as I return, in closing the Council I wish to say that I shake hands with each and every one of you and with your respective families, and I wish you each and all a Merry Xmas and a Happy New Year, and that your

Tripp County lands may bring you \$4,000,000.00 at least. In closing I desire to say that I believe that you are in the hands of a good agent who is looking after your welfare and best interests, and when in doubt over anything do not fail to call upon him for advnce and follow it.

(Council adjourned at 4 o'clock, P.M., Thursday, the 20th)

I hereby certify that the foregoing fifty-five typewritten pages is a correct transcription of shorthand notes taken by me of Councils held by James McLaughlin, U.S. Indian Inspector, with the Indians of the Rosebud Reservation, So. Dak., from December 14th to 20th, 1906, inclusive

/s/ Thomas F. Murphy
Assistant Clerk.

Rosebud Agency, S.D.)
December 21st, 1906.)

[1] Council in regard to opening the surplus and unallotted lands of Tripp County, S.D., which adjourned December 20, 1906, reconvened January 17th, 1907 at 1 o'clock P.M., with about 100 Indians in attendance.

Louis Bordeaux, Interpreter.

AGENT KELLEY: We have called you together to consider this matter further with Inspector McLaughlin who has been to Washington and held conferences with the authorities and is now ready to make the matter plain to you.

INSPECTOR MCLAUGHLIN: My friends, I am pleased to meet you again. This is the beginning of a new year and I wish you all a very happy and prosperous year. We have reassembled after an adjournment of three

weeks. Three weeks ago today we held our last council. I am glad to see such a large representative gathering here, which considering the condition of the roads and the inclemency of the weather, is very pleasing to me. I visited Washington as I stated to you in our last council that I would and had three conferences with the Commissioner of Indian Affairs in relation to our negotiations. I would have returned a few days earlier but the day after my arrival in Washington I was served with a notice to appear before the Department of Justice in a case which involved certain questions in which the Colville Indians of the State of Washington were interested and was before the court of claims as a witness in the case which delayed my returning as soon as I otherwise would. I am prepared to make clear to you the different questions which you submitted before I left, on my recent visit. This is the paper which you submitted to me on the 20th day of last month and my replies to the several demands it contained appear on pages 43 to 55 of the minutes of our council, a copy of which minutes is filed with your agent. To begin where we left off at the close of our last council on December 20th, I will state that I handed your memorandum proposition to the Indian Commissioner which he took home with him so that he might read it with care, and he concurred in my explanation of the various phases discussed by us and my answers to the different questions submitted by you people. The Commissioner was very earnest in his expressions and directed me to convey to you people his great desire to protect your interests and obtain for you the very best conditions and price possible for your lands: that [2] he would do everything in his power to meet your wishes in placing the matter before the committees of Congress, but that after going as far as was reasonable he could not go beyond it, and that in case

you were not willing to meet existing conditions in a reasonable way he would at least feel that he had done his duty in striving to promote your welfare. He was very pleased and commended the judgment of you people very highly in your desire to provide for an interest bearing fund of one million dollars and said that while 5% interest was a very high rate of interest on such a deposit, more than has been allowed on similar deposits for some time past, he would do everything he could toward having it accepted, and Congressman Burke, who is the author of the House Bill for opening Tripp County, and a member of the committee on Indian Affairs, also said that he would do everything in his power to meet your wishes in this respect. The allotments for all of your children who have been born since allotments were completed will be provided for as you already understand, and will be made part of any agreement that we may conclude, and Indians who have undesirable allotments will be permitted to relinquish them and take other allotments in lieu thereof on any unoccupied lands of the reservation including Tripp County. It now seems that the only question to be considered by you people to enable us to reach an agreement is that of the payment to parents the shares of their minor children. The Commissioner would not concede your contentions to that question. He said that the minutes of our councils showed that I had answered this question very fully and met his views exactly, which explanation I will now read from pages 19 to 21 of our council minutes, as there are many here today who were not present at that meeting.

(Inspector reads minutes of council of Dec. 15th commencing with the second paragraph page 19 to and including second paragraph page 21)

The Commissioner stated to me that it was not only in the interests of you people but for the good of all Indians

of the United States that this method of caring for the shares of minors should be adhered to, and from his remarks I am confident that he will gladly continue increasing the so-called Roll of Honor, which I have heretofore explained, until many more, if not all of the [3] Indians of the Rosebud Reservation are included in it. From the trust reposed in him in this respect and the proper accounting of the estates of Indians which is expected of him, he feels that he must protect the Indian minors until he has reasonable assurance that the money which rightfully belongs to them will be well expended. In this connection he called my attention to a paragraph of the Indian appropriation Act for the present fiscal year which became law on the 21st day of last June, which I will now read to you.

(Inspector reads paragraph on page 3, Public 258, approved June 21, 1906, Indian Appropriation Act for the Fiscal year 1907, providing for the shares of minors retained in the Treasury to draw 3% interest)

In order that there might be no misunderstanding about this, I asked the Commissioner "Will the interest on the respective shares deposited be available for payment to the parent annually until they are 18 years of age?" That deposit belongs to the child and is paid to them when they arrive at 18 years of age, but the interest on the deposits is available annually and may be paid to the parents of the minors. You should understand the difference between the principal fund and the interest on that fund. The principal fund under the rulings of the Department belongs to the minor and should be retained for him, except when paid on the Roll of Honor, but the interest that is due annually is available and may be paid to the parents of the minor children until the minor reaches the proper age and then the entire amount is paid to the claimant and for which they receipt. My friends,

the Commissioner is very earnest in his desire to protect the interests of you people and the welfare of your children, and that is why he is so determined upon carrying out this regulation of the Department. I showed him the slip of paper, the extract from the minutes of our council in 1901, which was handed me when I was in council with you here last month, wherein I had stated during our Gregory County negotiations that a certain amount of money would be paid to every man, woman and child. In handing said paper to him, I explained that the withholding of the shares of minors had been adopted by the Department since the negotiations with you people in 1901, and that you contended for the [4] right as parents to receive the minor shares for your Gregory County lands on account of it having been the rule which had existed from time immemorial in dealing with Indians up to that time. The Commissioner answered that by saying that a wrong which had been practiced for many years did not justify continuing that wrong; that better methods should be adopted, and that is why this system of providing for the minors until they reach the proper age has been adopted and that property which rightfully belongs to them is now being safeguarded by the Department.

In regard to the \$4.00 per acre which you ask for your school lands, both the Commissioner and Mr. Burke told me that such price would be out of the question; that it would be considered as unreasonable when it reached Congress, and that \$2.50 is the highest price that has ever been allowed by Congress on any Indian reservation school lands. Both the Commissioner and Mr. Burke felt quite hopeful that \$2.50 per acre for the school lands would be allowed, but anything over that price would make the proposition prohibitive and would not be entertained by Congress. Mr Burke called attention to the

fact that the Indians of neary every other reservation in the country are receiving only \$1.25 for their school sections, that is what is known as the minimum price for Government lands, but here you people are getting \$2.50 per acre for the school sections that is, two sections in each township. Your Agent made a suggestion to me when I was here a few weeks ago which I submitted to the Commissioner which he was very much pleased with. It was in relation to school sections which might be allotted or partly allotted to Indians. Any of the school sections which had been allotted to Indians in Gregory County, the State had the right to select any other lands in the township, which gave them the right to select the best land in the township. Your Agent suggested that as sections 16 and 36 in each township are school sections, if either of these sections or any portion of them should be allotted, then another section of similar character and equal value be selected in [5] lieu of them and not allow the State authorities to select the very best land. This would save that proportion of your more desirable lands for the higher price, coming under the first entry, and should we enter into an agreement as to the other provisions, we will incorporate a provision covering that feature very clearly. I do not think of anything further of importance to say at present as we have gone over the other features so often. You all remember the closing of our last council when you submitted this paper asking \$6.00, \$5.00 and \$4.00 per acre, respectively, for the different classes of the land, over which we had considerable discussion at the time, and I suggested splitting the difference between the \$5.00 per acre provided in the Burke Bill and the \$6.00 which you asked, and to call it \$5.50 per acre for the first class entry, \$4.50 per acre for the second class entry, and all after that including the School Sections to remain at \$2.50 per acre, because I

was as satisfied when talking to you at that time as I am now after talking with my superiors, that no greater price would be allowed. You must consider, my friends, that there is comparatively little land in these school sections when considered in aggregate, and under the circumstances you should be willing to accept \$2.50 per acre for the School Sections. As I stated to you before that both the Commissioner and Mr. Burke, who are determined to do the very best they can in protecting your interests, feel that the \$2.50 per acre for your school lands is all that can be reasonably demanded, and that it would be futile to urge for a higher price. There is now very little difference between us. I am ready to incorporate the depositing a million dollars at 5% interest and the petitioning to the Department through your Agent as to what disposition in the way of purchases you may wish to make from the remaining proceeds as received. As to reallocoting those who have poor allotments and to children who have no allotments, that will be made a part of the agreement.

As to the written statement of requests which you handed me [6] at our last meeting, I explained at the time that certain of its sections which I indicated by pencil check marks, were irrelevant and not pertinent to the question before you, but I submitted the paper to the Commissioner for consideration. I stated to you when you handed me that paper that your 1st, 2nd, 3rd, 4th, 7th, 8th, 9th & 10th articles would be considered, but that the 5th, 6th, 11th, 12th & 13th had no bearing upon the question, but that I would submit them for consideration of the Department Officials, and in reply to the 13th I wish to read a letter written to your former Agent (McChesney) a short time before he left here.

(Reads letter to U.S. Indian Agent dated Nov. 9, 1905, in regard to work on roads, reservoirs, allotments, etc., in lieu of issue of rations)

This is a question of considerable magnitude and the changing from a fixed policy to a new process is necessarily slow, and I therefore wish to say in conclusion that you may feel easy in your minds that the Commissioner is thinking of you constantly and doing everything in his power to best promote your welfare. I have known many Indian Commissioners, have served under eleven filling that office, and none have worked more earnestly for the Indians than the present Commissioner is doing. My friends, I think the only question now to be disposed of is that of the shares of the minor children being retained in the Treasury until they are 18 years of age. You know that there are a number of you already drawing those shares, those on the so-called Roll of Honor, and each of you have an opportunity of being thus enrolled. Furthermore, the shares of these children returned to the Treasury are drawing interest at 3%, and that interest can be paid annually to the parents of the children until the child arrives at 18 years of age.

My friends, I have now explained all additional that I have learned in reference to this matter since I left here three weeks ago, and you may want to consider the question among yourselves before talking to me further in relation to it, but if any of you wish to [7] ask me any questions, I am ready to answer you as I now understand them, and will answer truthfully and clearly so that you cannot fail to fully understand the whole situation. My friends, you have an opportunity to become a party to this agreement for opening your Tripp County lands and of securing an agreement that is much more generous than the Burke Bill, but it will be along the lines of said Bill. If you do not feel like accepting the reasonable proposition now before you, I fully believe that the Burke Bill will become a law. Many people are desirous of having you accept the proposition, who feel that if you

do not consent, the Burke Bill will be passed by Congress and I know of my personal knowledge that there is no one more anxious and desirous of having your full concurrence than Mr. Burke himself. I had two conferences with Mr. Burke. The day before I left Washington I was nearly two hours with him in his office, discussing this matter, and am convinced that he will concede much in order to have you people satisfied. Remember, he is only one man of a great many members, but he is a very popular man of the Committee on Indian Affairs, and when he makes statements and urges a recommendation he is very apt to be listened to.

I simply mention these facts, my friends, so that you may not lose sight of them when considering the matter and I assure you that the Secretary, Commissioner, and Mr. Burke, the latter being the author of this Bill, will do everything in their power to meet your wishes in placing this matter before Congress in your interests, if you are not unreasonable in your demands. I am now ready to listen to you and to abide by any decision you may make to discuss the matter further this evening or adjourn until morning.

HOLLOW HORN BEAR: In the Gregory County Treaty, the minor children's money is being retained in the United States Treasury at 3% interest. Will the money be handled the same way in this treaty or the agreement we now make?

INSPECTOR MCLAUGHLIN: Yes. There is no doubt of that.

HOLLOW HORN BEAR: There is another question I want to ask you. [8] Suppose that Bill passes. Our Agent has the power to recommend that anyone shall get his minor children's money and if the Agent recommends, can he get it?

INSPECTOR McLAUGHLIN: That power is vested in the Secretary which he delegates to his subordinates. Where the Commissioner of Indian Affairs is satisfied that the parents are proper persons to receive the minor children's shares, he can do it.

HOLLOW HORN BEAR: There are some families who draw their money, and the Agent has to ask for money for their minor children for the others, and since this law allowing 3% interest can they still get their children's money?

INSPECTOR MCLAUGHLIN: Yes. I will endeavor to make this plain to you.

(Reads item relative to interest on minors' shares in Indian Appropriation Act, Approved June 21, 1906)

HOLLOW HORN BEAR: I understood that this law was passed since some of the minor children's money was returned.

INSPECTOR MCLAUGHLIN: Yes, but the Act covers all whose shares have been or shall hereafter be withheld from the parents.

HOLLOW HORN BEAR: That is all. Let this council be adjourned and we will have a council of our own and meet you tomorrow. We have come with our wives and we have to spend money. The Agent ought to give us some beef and hard tack.

INSPECTOR MCLAUGHLIN: Your agent and I recognized this fact yesterday, and I telegraphed to the Secretary asking that your Agent be authorized to subsist you people while in council. The requested authority has not yet been received, but I will ask your Agent to assume the responsibility until the answer comes, and will stand by him in this and know that he will not be censured for furnishing you necessary subsistence at this time.

TWO STRIKE: My friend, you know we have sold land in the past, as I told you when you were here before, and you know this payment should be for five years. You said it would be 5 years and there is three years left. [9] I want you to pay that first and square it up. You done that for us and if you mention this to the authorities it will be all right. Do you want us to throw away what we sold? I want you to fulfill that Gregory County treaty first. If you fulfill that treaty first there will be no harm in you talking for more land. That is all I have to say to you.

INSPECTOR MCLAUGHLIN: In reply to my friend Two Strike, I wish you people to understand that you are receiving payment for your Gregory County lands just as provided in the Act of Congress. You have at least three years more of the larger payments, and there will be money coming in from that for some time longer as there is land yet to be disposed of in Gregory County. Your agent has just told me that the Gregory County papers state that there are fillings being made there very week yet. Your Gregory County payments will be coming in regularly until that is paid up, and if we make an agreement for your Tripp County land it will be another transaction entirely, a different agreement, and the money coming in from that will have no direct connection with your Gregory County moneys. They will be two different agreements.

RED FISH: I want to put my hand before this proposed cession. We did not get anything from the Crook treaty. We are starving now. I want whatever money is coming to us from the Crook Treaty. I want you to give it to us in our hats. Of course, they have taken the Children's money and put it away. That will be hard on us. We will be starving if we do not get that money. I say that I put my hand in front of this. I have

over 190 men who will be opposed to it. Whenever a thing like that comes up I want to look and consider the matter over, but this time I will not. I am going home.

INSPECTOR MCLAUGHLIN: I wish to say in reply to my friend Red Fish that I feel as though some of you are under the impression that the money which is being retained in the Treasury is lost to you. On the contrary, I wish you to understand very distinctly that this money is being held for your children, and not only that but an [10] interest is being paid on it. As the children reach the age of 18 years, the agent helps them to get it and he just now tells me that he has already gotten over 100 shares for those who have reached their 18th year. Another means, apart from waiting until the minors reach 18 years of age, is the Roll of Honor which the Commissioner explained to me and which I have explained to you people. That door is open to each and every one of you and I know it is the Commissioner's desire to increase that Roll just as rapidly as justifiable. My friends, I do not wish you to leave the Agency, as I want you to carefully consider this matter. The Agent has told me that he is going to provide you with subsistence, and this being a season when you cannot do much at home, you might take a few days here and discuss this matter among yourselves and any question that you do not fully understand, call for me and I will come to your councils and explain them. I am here on this business only.

HIGH PIPE: Whenever the people give me power to talk, then I talk to a wise man, and if they did not give me that power I would not say anything. There was twelve men that have powers given to them by the people to talk for them, but I came in here to see you and pay my respects. I live across the White River and am going home.

HOLLOW HORN BEAR: What HIGH PIPE says is not so. They had a council and I was one of those, but what he says about speakers appointed is not so and this council should be open for everybody.

INSPECTOR MCLAUGHLIN: That is right. Every person has a right to express himself.

HOLLOW HORN BEAR: Every man has his own knowledge and therefore he can think and he can talk. I would like to get an order for the rations so that we may take it home and have a council and I have invited everybody to be there.

SHOOTING CAT: I have been listening to you and have tried to understand what you say. I am not going away from here. I understand about these minor children's money. Many have died. I have many little grandchildren who are crying for food. I understand that [11] the money is retained, but the children are crying for food. My friend, I have always touched the pen for you when you come here. Whenever the Gregory County treaty expires, at the end of five years, I will then touch the pen for you but not this time.

INSPECTOR MCLAUGHLIN: My friends, I believe that you all feel that I am your friend and that I will do everything in my power to promote your welfare, and I wish you to get together tonight. Your agent is ready to furnish the necessary rations to enable you to discuss the matter tonight so that you can meet me tomorrow. Should you wish to see me anytime tonight I will go before your council to answer any questions. I would like to have you here by 10 o'clock tomorrow morning as there will doubtless be some questions you may want to ask me, and in the meantime should any question come up that is puzzling to you, send for me and I will explain it.

We will now adjourn until 10 o'clock tomorrow morning.

(Council adjourned at 4 P.M. to meet again on Friday, the 18th)

Council reconvened at 11 o'clock, A.M., January 18th, Thomas Flood interpreting.)

INSPECTOR MCLAUGHLIN: My friends, I am ready to hear from you as to what you may have determined upon last night in your council.

HOLLOW HORN BEAR: When you read from a letter the people do not understand, but whatever you speak without reading from a paper, the people understand what you mean. I mention this for the reason that whatever point you want to go before the council we want you to say it plainly. We have taken into consideration the amount that we consider an acre of our land worth. We want one million dollars put in the Great Father's Treasury at 5% interest. We want that money to be drawing interest for ten years and the interest paid to us annually in cash. After the end of ten years we want the principal of that fund to be divided equally among us. We made this proposition to you and do I understand you right when you say that it would be taken into consideration in the Great Father's Council and would be made in that way?

[12] INSPECTOR MCLAUGHLIN: I have already said that I would incorporate that in the agreement, but as I stated to you yesterday, the Commissioner said that 5% interest was a higher rate than has been paid for some time past on a fund of that kind, but that he would favor it, and Mr. Burke promised the same.

HOLLOW HORN BEAR: The reason why we ask this rate of interest is that we take it from the Three Stars Treaty. (Act of March 2, 1889) That money drew 5% interest. The reason we ask this is because it has been

done before, and we ask it for this. If anyone in need wanted any part of his share out of the principal, could he get it through the Indian Agent? Could he draw any portion of his share?

INSPECTOR MCLAUGHLIN: Not if it is placed as an interest bearing fund for a certain period of ten years, but the agreement will provide that all proceeds of the land over the million dollar deposit shall be expended upon a petition of a majority of the Indians, through the Agent and endorsed by him, stating what disposition you desire to make of it. Your agent and myself have figured very conservatively and we conclude that the surplus lands in Tripp County will bring about \$3,000,000. The million dollar interest bearing fund will be only about 1/3 of it. The balance of the money will be coming in from time to time, the same as from your Gregory County lands, and all over the million dollar fund will be subject to petition by you people through your agent, in the discretion of the Secretary of the Interior. Congressman Burke feels quite confident that the land will bring in the neighborhood of \$4,000,000, but that will depend upon the number of allotments taken within the ceded tract. There may be three or four hundred allotments taken out there. I estimate that there will be 700,000 acres to be disposed of under this agreement.

HOLLOW HORN BEAR: We had our talk last night and I mentioned what it would amount to and you have now answered that. We decided that we want our people to take allotments, all those who are entitled to [13] them, before the land is thrown open.

INSPECTOR MCLAUGHLIN: That is distinctly understood and will be provided for. The Bill provides for that, but our agreement will stipulate that allotments are to be completed before the tract is opened to settlement.

HOLLOW HORN BEAR: We also said that some people who have not drawn their Gregory County money have died and we asked for that money to be gotten through the Indian Agent. We do not want to go before the Probate Court at Oacoma, we want it done through our agent.

INSPECTOR MCLAUGHLIN: There is a provision already providing for that under consideration by the Commissioner. He already has that in view.

HOLLOW HORN BEAR: There is another thing which you have made us understand. That is about the labor. We understand too that there is a rule that our minor children will not be paid. We also mentioned about having lost calves here in the past year and you have made us understand that the contractor failing to furnish the cattle was the fault of that, but I have not made up my mind as to this. It is not going to settle my mind by you telling me that. I am going to follow that up in the future. This is all that I have to say. I am going to say a few words to my people here about something that was talked of last night, but first I want to ask you one question. You have told us that there will be one million acres of land. Suppose this bill goes through and our children and others entitled to allotments be allotted inside the tract, will that which is left be sold and no more land asked from us?

INSPECTOR MCLAUGHLIN: The acreage of Tripp County is a little over a million acres, 1,094,000 acres, about 138,000 acres of which has been allotted, leaving about 907,000 acres unallotted as it now stands. When the children, and those who desire to change their [14] allotments are allotted, should they select lands in Tripp County, it will reduce the acreage greatly. A specific number of acres will not be stipulated in the agreement, simply all lands that are left after the allotments are made, are to be disposed of, as provided in the Bill.

HOLLOW HORN BEAR: I tried to see the agent this morning and ask him how many people are entitled to allotments, but he was so busy I could not do so.

AGENT KELLEY: I think there is probably six or seven hundred.

HOLLOW HORN BEAR: You came here and presented the bill to us saying that you would give us \$5.00 per acre the first three months, \$4.00 per acre for the next three months and \$2.50 for the school lands and all after six months. In answer to that we told you that we wanted \$5.50 per acre for the first three months, \$4.50 per acre for the next three months, and that we would let the Great Father have the school lands at \$2.50, the school lands alone. The council we held last night, we decided to make an amendment to that. The council voted on it and I am now going to state it, and I am going to hold on to it. Where I said that I would accept \$5.50, they want \$6.00 for the first three months. The next three months they want \$4.50 and \$2.50 for the school lands that the Great Father is to pay for, just the school lands alone. This together with the other conditions which I have already mentioned, we want to become a law. First three months \$6.00. The next three months \$4.50.

INSPECTOR MCLAUGHLIN: In order to make the record clear, and I to understand that all after six months, including school lands, is to be \$2.50 per acre?

HOLLOW HORN BEAR: \$2.50 for the school lands and other land that will be left after the first six months. I want to tell you now that if it is your intention to reduce this price, I will never consent to it. I will always hold on to this price, and we want this to become a law and want these prices.

[15] INSPECTOR MCLAUGHLIN: I wish to have this made plain so that we may understand each other. Under

my instructions, which I explained to you last December, the price was as provided in Mr. Burke's Bill, which is \$5.00 per acre for all land taken in the first three months, \$4.00 per acre for all taken the following three months, and \$2.50 per acre for all taken after that, including the school lands, and all land not taken at the expiration of four years, to be sold to the highest bidder for cash. In the memorandum which you handed me on the 20th ultimo, you also request that all the land remaining untaken at the expiration of four years shall be sold at public auction to the highest bidder. You now demand an increase of \$1.00 an acre over the higher price that was provided in the Burke Bill and my written instructions, as instead of \$5.00 an acre you now demand \$6.00 per acre for all the land taken the first three months, and instead of \$4.00 per acre as provided in the Bill, you demand \$4.50 for all taken the next three months, and after six months, the price, including the school sections, as provided by the Burke Bill to remain. I now understand that \$6.00, \$4.50 and \$2.50 per acre, respectively, are the prices you demand.

HOLLOW HORN BEAR: Another thing that we want I forgot to mention, which is, that as long as there is any surplus land and there is a child born to us, we want it to be allotted. We want that to be included in our agreement and become a law.

INSPECTOR MCLAUGHLIN: I will include that in the agreement.

HOLLOW HORN BEAR: You also said that you were afraid that the Burke Bill would become a law if we did not consent to it.

INSPECTOR MCLAUGHLIN: I did.

HOLLOW HORN BEAR: I do not want that. I suppose the reason you say that is because in Oklahoma there was a tribe of Indians whose land was thrown open contrary

to their wishes. Those people wanted \$10 per acre for their land but the Government set a price of \$1.25 and opened it.

[16] INSPECTOR MCLAUGHLIN: That was the Kiowa and Comanche reservation.

HOLLOW HORN BEAR: Those same people hired a lawyer and took it to the Supreme Court and realized at the end \$20 an acre from it. I do not think that you can take this land away from us for nothing. I hope the Government will not try to scare us into anything, but will give us fair and honest consideration. That is all I have to say. It is always the best plan to be friendly and shake hands with one another.

LITTLE CROW: This morning I thought a short prayer to have a nice friendly talk this morning. Now I am before you. My friend, you are now trying to make a new treaty. Therefore, my friend, do not hurry us up but give us time to take this into consideration and look into it thoroughly. My friend, you can see for yourself that you are taking the eastern part of our reservation and there is hardly anybody in this council from there. The roads are bad and they cannot get here. My friend this is the way I feel about the land you are talking about now. Wait until it is warm weather and have the Great Father send a man out here or two men and have them go over that land and see what it is worth. Then, we can talk about it. I mention this because I am selected to represent my people from my district and I think I have a right to express my opinion in regard to this matter.

REUBEN QUICK BEAR: My friend, this is not the first time that we have met you, we have met you quite often. We are a tribe of Indians here. We have a guardian and he is the Great Father, and through him you are appointed to come here and look out for our best interests, and that is what you are here for, to see that we

get our due. For those reasons you came here with a Bill which is going to become a law, and explained it to us. What you have said to us we have talked about and taken it into consideration. Last night the man that mentioned those things was Louis Bordeaux, and [17] this is what he mentioned. He mentioned that for the first three months they want \$6 per acre. The next three months \$4.50, and he said for the school lands \$2.50. He never mentioned anything about any of the surplus land, but only the school land at \$2.50. Therefore, I say that we did not understand one another. For that reason, I want to mention to you what I think. What I want is this. We want the Great Father to pick one man and us pick one man and let those two men pick the third man and send them down in that country and look over every acre of it and see farm land and hay land and let us make an agreement accordingly. Let them appraise the land. If this was done that way it would be agreeable to our people here and we would know what we were getting. We Indians here have no teaching. We have no education. You white people are smart. You are wise people. You are educated and whenever you come up against anything like this which you think is worth more, you hire a lawyer and take it to the court and see. That is the only way that you can get justice, and that is the reason you do it that way. Treaties have been made in past years by not understanding one another at all, and after the treaties have been made the people then commence to think back and some of them scold themselves for signing or making any such agreement. I think it will be time enough whenever our land has been appraised and we know what it is going to be appraised at, and we can then enter into an agreement, and will put in those clauses which are presented to you. My friend, you are married to a mixed blood Indian woman. Your wife has Indian

blood in her, and you say you are friendly to us. You go back and tell the Great Father that we Indians want what our land is worth.

SORREL HORSE: I am in favor of Hollow Horn Bear's speech.

INSPECTOR MCLAUGHLIN: There have been two presentations of this matter which are at variance with each other. That of Hollow Horn Bear and that of Reuben Quick Bear, and I desire to answer them with a great deal of care, and I desire that each and everyone of [18] you pay close attention to what I say so that you may clearly understand me and will therefore take an hour's recess for dinner. We will not adjourn, simply take a recess. I will be back here at one o'clock and take up these two questions and answer them very fully.

(Take recess of one hour and meet at 1 o'clock, P.M.)

INSPECTOR MCLAUGHLIN: My friends, I will first say a few words in relation to my friend Hollow Horn Bear's remarks in his last speech. He spoke something in reference to the lands in Oklahoma that had been opened to settlement at \$1.25 per acre. To go into that fully and explain it so that it would be understood from the beginning to the end would take a very long time, as that is a matter that was undecided for several years. I will tell you in substance that it was a treaty made with the Kiowa and Comanche Indians in 1893, by which they were to receive, after allotments were made to the Indians, \$1.25 per acre for all surplus lands, that is, outside of their allotments. The treaty with those people was something similar to yours of 1868, requiring three-fourths of the Indians to sign in order to validate it, and there was less than half of them who had signed it. Congress did not act upon it until several years had elapsed. When they acted upon it they ratified the agreement just as made, notwithstanding the fact that it

did not contain the required number of signatures. The lands were allotted to the Indians and the surplus lands opened to settlement at \$1.25 per acre, excepting a pasture of 550,000 acres, which was reserved. The Indians were very much dissatisfied with the transaction and brought action in the courts which they carried to the Supreme Court of the United States, which brought about the decision known as the Lone Wolf Decision. They were ably assisted by friends of the Indians who bore the expense of having it carried to the Supreme Court, which is the court of last resort. The decision was, as I have heretofore explained to you, and which [19] I will repeat again, that the Indian is the ward of the Government, that the Government is the guardian and that the guardian has the right to do that which is deemed best for the ward; therefore, Congress may legislate for Indians without consulting them. But my friends, notwithstanding this, I have been sent here to confer with you in relation to your Tripp County lands for the purpose of trying to make an agreement that may meet your wishes, that the Department can aid in having ratified by Congress instead of having legislation enacted that would open your lands without your concurrence. I wish to say too that the Secretary of the Interior and Commissioner of Indian affairs are hopeful that we may make an agreement upon which the Department can stand in presenting the matter to Congress. If, after the Department officials feel that they have done their full duty and gone to the limit of all that they could, should the Indians refuse to accept a reasonable proposition, Congress would doubtless enact legislation to open the lands regardless of your wishes. I understood my friend Hollow Horn Bear to say that you people did not wish to be intimidated, frightened or forced into doing that which you did not wish to do. It is not my desire nor the

desire of the Commissioner of Indian Affairs, nor of the Secretary of the Interior, that such should be resorted to, and it is far from my intentions that any words that I have said to you or may say to you in our councils here should be construed as meaning intimidation or trying to force that which is distasteful to you. If, after I have placed the matter before you in as plain language as possible, and you still refuse, I will have done my duty, will make my report accordingly, and my work will have been accomplished under the instructions which I have received from the Department. I will now take up the questions raised by my friend Reuben Quick Bear, and try to explain them so that you can understand them.

Reuben suggests the appraising of your lands by three Commissioners. To begin with, that would mean a delay of a great [20] many months and the expense of three Commissioners, with the necessary assistants that they would require, would approximate from \$30.00 to \$50.00 per day. That is, there would be three Commissioners, their salaries are usually \$10.00 per day. They would have a surveyor, flagman, chairman and a couple of teams, for the reason that such appraisements are usually made in 40 acre tracts, and the appraisement of your Tripp County lands, after the allotments for your children had been made, would cost from \$6,000 to \$12,000. Senator Gamble introduced a Bill in the Senate a few days after Mr. Burke introduced his Bill in the House, providing for the opening of your Tripp County lands by appraisement, which provided \$1.25 per acre for your school lands. Both Bills were referred to the Department for report and a report was made upon both bills, but favoring the Burke Bill as best for you people. I have a copy of the Burke Bill which shows certain amendments recommended by the Indian Office, one of which makes it clearly impossible for any of the land

filed upon by an entryman, if abandoned before final proof is made, to cause any loss to you people, that should any entryman fail to complete his proof, the land reverts back to the Indians and the man filing upon it again must pay the same price that the original entryman did, and all that the first entryman may have paid in goes to you people. From my knowledge of the Indian lands sold by appraisement and of the plan proposed in the Burke Bill, I regard this system the better and believe that it will bring a much larger total than the appraised system would.

The system I submit provides for three different classes of land. The great rush will be for the first class at the higher price, the first three months. As I have explained to you heretofore, when your Gregory County lands were opened, more than three-fourths of the entire cession was taken at the \$4.00 per acre, which was the highest price.

There is no question in my mind, or in the mind of any [21] person who understands the conditions in this country, that, with the extensive advertising that your Gregory County opening brought about throughout the country, that the first ninety days will take all the desirable lands in your Tripp County lands, at the higher price. Under this system we are sure of quick, prompt sale, and prompt settlement on all of the lands under the first two prices, but under the plan of appraising your lands it would mean that nothing could be done in the way of appraisement until all of the allotments had first been made. The delay in making the appraisements and providing for the sale and everything connected with it, would necessarily delay the opening greatly, and Congress might not be disposed to await the delay. My friends, you should put that aside and consider the proposition which I have submitted to you. I feel that we have discussed this matter very fully during our councils last month, and

again yesterday and today, and I am now going to express myself very freely and plainly in the matter, I feel that I will have the Commissioner as well as the Secretary behind me in the report I submit, and also Mr. Burke, and I had Mr. Burke's assurance that he would do everything reasonable that he could to meet the wishes of you people, as he does not desire legislation enacted without your concurrence. It was put to a vote here on the 20th of last month and the prices \$5.50, \$4.50 and \$2.50 per acre, respectively, were carried, which I explained to the Commissioner and Mr. Burke, and whilst they both thought that price might be difficult to get Congress to accept, I inferred from their remarks that they would do their best in support of those figures. Feeling that my report in this matter will have considerable of a bearing upon its acceptance, and to meet your wishes, as presented here this morning by your speakers, I will assume the responsibility and consent to enter into an agreement with you for \$6.00 per acre for the first three months, \$4.50 per acre for the succeeding three [22] months, and \$2.50 per acre for the remainder, including the school lands, and all that remains unentered after four years, to be sold to the highest bidder for cash. This, together with the other conditions which we have talked of, and as requested by you, will be embodied in our agreement, which will provide for the ten year million dollar fund at 5% interest, the interest to be paid annually, which would be about \$10.00 per capita for ten years, and the principal to be distributed among you at the end of ten years. After the proceeds of the lands would reach the million dollar deposit, the rest of the money coming in from time to time would be subject to a majority petition of you people through your agent as to its disposition. It would also provide for reallocation to those of you who have undesirable allotments, which

may be taken anywhere on the reservation, including Tripp County, before it is opened. The agreement which I offer also provides for allotments of 160 acres each to all living children born since allotments were completed here, and furthermore, for allotments to all children hereafter born so long as you have any unallotted land remaining on your reservation. My friends, I have given this matter a great deal of study, have thought it over during the dinner hour, and have gone my limit as to price and terms, and it is now for you people to determine. If you accept the proposition which I have outlined, I can have the agreement ready for signatures by next Monday morning. If you reject my offer, it is unnecessary for me to remain here longer and I will wire the Department that you have refused the proposition and it will then doubtless be left to Congress to proceed in the matter as desired, in which event, Congress will very probably enact the Burke Bill as it was introduced, and from which, as I estimate it, will bring \$600,000 less than from my offer. The Burke Bill is but \$5 per acre for the first three months and \$4.00 for the next three months, instead of \$6.00 per acre and \$4.50 per acre respectively, as now offered you.

[23] REUBEN QUICK BEAR: My friend, when you first came here why did you not tell us the price you were going to give and push that price for us? My friend, you ought to have told us in the first place that you would give us \$6, \$4.50 and \$2.50 per acre, and \$2.50 per acre for school lands, and the remainder to be sold at the highest price at auction.

INSPECTOR McLAUGHLIN: I submitted the price suggested in my written instructions, namely, \$4, \$4, and \$2.50 per acre, respectively, and after my visit to Washington I was prepared to allow \$5.50, \$4.50 and \$2.50 per acre for the respective classes of the land. But

here in your councils you demand \$6, \$4.50 and \$2.50 per acre and I have assumed the responsibility of adding fifty cents per acre on the first choice lands to meet your demands. I do not know whether the Commissioner or Congress will accept it, but after explaining the situation to Mr. Burke, I was satisfied from his remarks that he would be willing to increase the price a little in order to have it satisfactory to you people. The Commissioner and Mr. Burke concurred in that \$5.50 & \$4.50 price and I have added 50¢ to the higher class lands, to meet your wishes and hope for its approval by a full statement of the facts. I was not neglectful of your interests during my recent visit to Washington.

REUBEN QUICK BEAR: As I said before, we Indians know nothing, have no learning at all, while you are a wise man, and if you are wise for the Indians you should have told this in the first place clearly to us.

INSPECTOR McLAUGHLIN: I do not like to be accused of not telling the truth. I told you just what my instructions were and I am surprised that you or any other person here should make that remark. I told you in our first council just what my instructions were. I left here for Washington without authority and ran the risk of being reprimanded, but received a telegram at Valentine which authorized the trip.

REUBEN QUICK BEAR: I did not mean what you told us when you [24] returned, I meant that you should have told us yesterday. One of our chiefs here, Hollow Horn Bear, said that the Indians have no understanding and ought to have no ill feeling against each other, and you ought to have told us the price this morning. This is what Hollow Horn Bear here has accused one man of. The interpreter, Louis Bordaues, mentioned the price last night exactly as you have said now, which was \$6.00, \$4.50 and \$2.50 for the school land, that was mentioned

last night. Hollow Horn Bear has said what they had done last night was \$6, \$4.50 and \$2.50 and so on, and the school lands \$2.50. That is what Hollow Horn Bear told you they had accomplished last night. Whatever they did last night was wrong, a misunderstanding, so I have told you that we make another proposition which is to appraise the land and take that off home with you. That is what I told you this forenoon. You said that the cost of appraisement will be about \$6,000 dollars. We are wards of the Government and the Government ought to stand that expense themselves, so that we do not have to pay for the appraisement ourselves.

INSPECTOR MCLAUGHLIN: Such expense always comes out of the sale of the lands appraised. I have a copy of the Gamble Bill here providing for the appraisement of your Tripp County lands and it provides \$1.25 per acre for the school sections, and the expense of everything connected with it to be paid from the proceeds of the lands.

REUBEN QUICK BEAR: Of course everything should be done right and anything connected with the appraising, the appraisers would have to call upon somebody to help them and the help ought to be paid by the appraisers. I will ask you a question and you will remember it. You were sent here by the Government to negotiate with the Rosebud Indians in regard to the Lower Brules, and you told us that the Secretary told you that our wives who received allotments should have payment the same as heads of families and that was promised to us by you. After you had accomplished this you went back to [25] Washington. The Secretary who made this promise left and another had taken his place and what you promised us was not done, therefore, they had you make a promise for nothing. Now, I ask another question. This \$6 and \$4.50 and \$2.50 you offer, can

you assure us that you will have that done when you go back? My friend, I want to know this as you heretofore made a similar promise as you have said now and the promise was not fulfilled. What I have mentioned in regard to the appraisement of land I will stand by, and there is money yet due to us from Gregory County. We know that there is \$200.00 due each and every one of us from the Gergory County money, therefore, we can depend upon that money, and let appraisement of land go on. This is what I want and I will stand by it.

INSPECTOR MCLAUGHLIN: I feel called upon to repeat again what I have stated to you people several times in the past, in explanation of what you call the Lower Brule treaty, which was for the admission of the Lower Brules to your reservation. When I was in Washington just before coming to your reservation to negotiate that agreement, the officers of the Indian Department suggested that I get the consent of you people and of the Lower Brules that the allotments be changed so that instead of the heads of families getting 640 acres, it should be divided, giving the husband one-half and the wife one-half, 320 acres each, that in case of separation the wife would not be left without any land. I then asked if when submitting that question could I tell the Indians that the wife would then receive the benefits of Section 17, the same as the Head of a Family or a single person over 18 years of age. A letter from Secretary Hoke Smith was shown to me and your Agent, Dr. McChesney, who was with me at the time, instructing the Commissioner of Indian Affairs as to the benefits to which Sioux allottees were entitled under Section 17 of the Act of March 2, 1889, having special reference to persons on the Crow Creek Reservation, and which stated in substance that each and every [26] Sioux allottee when they reached the age of 18 years should receive the

benefits of Section 17 of said act. Something over a year later I learned from Dr. McChesney that the rule had been changed by the Department and that only the Head of the Family and single persons over 18 years when allotments were ordered were entitled to said benefits. In the meantime, Secretary Hoke Smith had been succeeded by Secretary Bliss and the question having been submitted to him, the Department ruled upon it differently, which has since governed in the issue of said benefits. My friends, you have reason to feel disappointed over that, but you were no more disappointed than I was over it, or regret it more than I do. I was shown a letter regarding it, and made that statement to you in good faith, and every word that I stated to you at that time regarding that matter was corroborated by Dr. McChesney who was then your agent, who corroborated the statement which I made to you on that occasion.

The next question is, my friend Reuben Quick Bear's, asking that in case we enter into an agreement at \$6 for the first three months, \$4.50 for the next three months and \$2.50 per acre for all after that, including the school lands, if I am sure that it will become a law. In answer to that I will say that I believe it will, else I would not enter into it. But I cannot promise it, neither could the Secretary or Commissioner promise it. There is no knowing what Congress may do in any legislation until it is finally enacted, but in case we enter into an agreement, such as I have offered you today, which is my limit, I fully believe that it will be accepted and ratified by Congress.

RALPH EAGLE FEATHER: My friend, I am going to say a few words to you today. On a Saturday, a couple of weeks ago, I prepared an offer that quite a number of our people concurred in. I came here and showed it to you and since I presented it they have taken some of it off

and changed it, therefore I have been ashamed to come before you again to say anything. I want to speak of two points. [27] If I understood you right you said just now that there had been a Secretary who was in favor of giving the benefits in regard to allotments to our wives and he had stepped out and another Secretary stepped in and looked at it another way. That is the way I understand you. Therefore, I want to say something in regard to the matter. My friend, this man Burke is going to step out sometime in March, and I understand that the Secretary of the Interior will also step out about that time. My friend, whatever agreement we enter into here, it will probably be undone as it was before, therefore, my friend, we would like to wait until these people go out and new men come in that will be there for four years and then we can enter into some agreement. In that way we will be talking about something that will have some weight to it, but in this we consider there is none. Last night I attended that council and sat there as President in a chair at the table. I want to tell you how I understood those people. This is the talk they had last night. For the first three months they wanted \$8.00, the following three months they wanted \$4.50. They wanted \$2.50 an acre for the school lands that the Great Father wanted. All the surplus land was to go at \$4.50. That is the way I understood it. What I am telling you here is the truth. I have nothing over my face, but these are the words they said and that is the way the people understood it. They did not want anything to do with the Burke Bill. They considered that it was killed.

INSPECTOR MCLAUGHLIN: It is not killed. It is sleeping but alive and waiting to hear from me. As soon as I tap the wire as to what we conclude here, that bill will be alive.

RALPH EAGLE FEATHER: I am going to tell you the truth now. We have told you that we did not want to take this into consideration and I am going to tell you again. The man who proposed this is going to go out of office in a short time. The Secretary is going to go out before long and I told you I am afraid of this. The reason why I am afraid of this is because when you come here in [28] the future you will say this is all undone, as the man who made this Bill and the Secretary have gone out of office and this is all undone. Probably you will tell us that way again. I want to tell you that I am afraid of this Bill.

INSPECTOR MCLAUGHLIN: My friend, Ralph Eagle Feather, raised a question which if you all feel that way, I wish to correct, and disabuse your minds in relation to it. The Secretary of the Interior is similar to a judge sitting on a bench. He constructs certain acts of Congress, certain provisions of legislation as he views them. Another man may come in and take a different view same as a judge on a bench, but the rulings of a Secretary are different from an Act of Congress. One man may construe an act different from what another would. That paper which your agent brought in here yesterday from which I read the provision allowing three per cent interest on all deposits of minors retained in the Treasury, that was an Act passed by Congress. It became a law on the 21st day of last June and was formerly a Bill just like this Burke Bill is. This is only a Bill as yet, but it can pass the House in a few days, go to the Senate and after passing the Senate and being approved by the President, it becomes a law. As to the Secretary of the Interior going out of office the 4th of next March. I wish to say in that connection that he has held the office longer than any other person ever has. He has held that office eight years, and retires voluntarily on account of age. When he goes

out, his successor will be governed by the laws enacted by Congress exactly as the present Secretary has been, and the Secretary who succeeds Secretary Hitchcock will take up all unfinished business and carry it along as though no change had occurred. Secretaries of the Interior, Commissioners of Indian Affairs, members of Congress and Senators change from time to time, that is true, but we are never without a Congress, and this is a Bill now before that body and as soon as it has been passed by Congress it becomes a law. You also say that the member who [29] prepared this bill and introduced it in Congress is going out on the 4th of next March. That is true. His term expires the 4th of March, but his standing in the body of which he is a member is very high. He is a member of the Indian Committee, and in all northwestern Indian matters his views are invariably adopted by the Committee. Mr. Burke is not the only Congressman who is desirous of having this tract of land opened. He has simply voiced the sentiment of the people, being on the Committee and the proper person to introduce it. And I again repeat that it is my earnest belief, in case you do not consent to a reasonable agreement, that the Burke Bill will become a law before the 4th day of next March. The price per acre which I have offered you, together with the other conditions which I am ready and willing to incorporate in the agreement, are preferable to the provisions of each bill and you will realize a great deal more money from it.

SPOTTED EAGLE: You came here and told us something that we would consider. If we go to the Agent and ask him any question he says why should you ask me such a question. I always tell my people whenever the Great Father gives you a law, act upon it. My friend, the reason why I am standing here, I am going to tell you something. I went into a council the other day and I heard some hard words in that council. I consider that

you are a big man and the reason I went to the other council is because I wanted to hear some of your words there. You told me that everybody has a right to discuss this matter. Some of the chiefs are sent to the council by their people with lots of names. These names are the same as if the parties represented were present. Some of the speakers had the paper which you say is not killed. The interpreter here has mentioned \$6.00, which everybody talked about today and sneeze over it, and he said that this paper, the Burke Bill, was killed, and I was thinking about it. I considered what we are talking about and they had election and had three different votes, but I did not vote on the questions. They voted to annul this paper and I knew that [30] it was going to be this way when we came here, and that is the reason I did not vote. There were two ex-schoolboys in the talk and some who were lying to them. The interpreter mentioned about this money three different ways. Of course he did not mention any \$2.50 to be paid for the remainder of the land. I do not want to talk anything about this, but I wanted to tell you what I heard.

ONE STAR: I want to say something. I came as one of the Indians, but there is one thing I am very anxious for, that is the reason I came here to see you my friend. Some of my children have no land, my grand children have no land, my nephews have no land. Those are the principal points that I come here for. We gave you the paper, my friend, and you took it with you and you come back with what was going to be all right, that is the reason I am in favor of this myself. Us Indians if we have \$100 each every day we would spend it all quick. Now, last night we decided that we should have \$6 an acre for the land. My friend, you should accept that and take that along. That pleases me. All the names that I have power to use, I give them to that man sitting over there, he is Hollow Horn Bear.

WALTER BULLMAN: I am living yet. I am going to tell you just one word. The Great Father wants a portion of our land and have been telling us this for several days. You ask us what we want for our land and what our wishes are and we have told you. We have mentioned \$6.00. You state \$5.00 and they say \$6.00. Also \$4.50 for the school lands. You offer \$2.50. That is laughable when you say that. What are we going to do with the surplus, nothing mentioned about that. Therefore I say that it has not been considered here. That has not been brought to the final point yet. Therefore we want our lands to be appraised as Reuben Quick Bear has mentioned to you. You say that our children are going to get so much land, but I will say to you that I do not think that will be done. My friend, [31] whatever we have said here we are saying that by our voice and that is very easily killed off, but we do not want that. Before consenting to anything we want our children allotted before we give our consent. I will say this that I have my doubts and I know that what we have said and asked for will never be done as a whole. I will say to you here that the people of this reservation did not give me power to come here and say anything, but you see yourself that this reservation is large and there are lots of our people who are not here. Therefore, my friend, let us stop and go home. There is not a large body of Indians here and we should not try to do anything to undermine the balance who are not here. I am trying to tell you the truth.

RED BULL: I want to say something is the reason I got up. I am not going to say that I want something myself personally. I belong to a camp of Indians out here and they told me what they want. I am here to represent them. I have seventy-two names which I am representing from my camp, and I have been depending on Hollow

Horn Bear, but I have got up now to speak for myself. In the first place, what my people want you have read it from your paper. Last night they had a council up here on the other side of the creek and I was there. They voted on a certain question. What they agreed upon last night and voted upon was what my people wanted and that is why I mention it. Several of these people you see in here now were not at that council, but those who were at that council were satisfied. The people that get up here and talk seem to be afraid to talk and I am a little afraid to talk and I am a little afraid to talk myself. Some of these people are afraid to say what they want and I am the same way. You have been here before and we have made treaties and that is why these people are afraid to say anything. I do not blame you any. I consider you an honest and straight man. I have reference to the land you came here for once before and mentioned \$2.50 for it to us. You told us at that time that if we did not agree to that \$2.50 that the Great Father [32] might make the price to suit himself. We have met with the same troubles that you told us we were liable to meet with at that time. I am afraid that we may meet with the same troubles again. Some of those people want a higher price and want to get all that they can and I am standing by those people. I will say to you that I am satisfied. I am getting \$8.00 and \$4.50 and \$2.50 for school lands. Also the very things that are mentioned on the paper there that you have read.

FRED BIG HORSE: I want to mention two things. They had a council here last night, and in that council they asked you if those things were going to be carried out and you said "Yes". They mentioned that they wanted a certain price and came here and told you and you told them that that would be carried out and therefore some got up and showed that the Burke Bill is

killed, but you get up today and say that the Burke Bill is not killed, but it is alive yet. We understand that this Burke Bill is not a law, but you come here and presented this proposition for us to take into consideration and offered a proposition and we have done it. You asked us to take this into consideration which we have, and what we want is to get the best we can out of it. We have taken it out into the different camps and taken this into consideration and talked it over and gave this man here (Reuben) power to come and mention the results of our council out in the country. I want to tell you and I want you to understand that whatever he says we have given him the power, the people who live out in the western part have come to that conclusion. They want the land appraised and we do not care whether this goes to the Great Father and becomes a law, but we are going to stand by what we want.

HOLLOW HORN BEAR: Whatever I have said to you here, I am going to stand by it. I am not going to look for anything beyond that. I [33] am going to stand by what I say. I am going home.

INSPECTOR MCLAUGHLIN: My friends, I wish you to understand this. I fully believe that there is not a man in this room but what has sufficient knowledge to understand the meaning of the Bill, because you people of Rosebud are very much advanced. Very many of you present here understand every word I say in English and speak and understand English as well as you do Sioux. When I came here last month I came under instructions dated the 5th day of December. I had heard that there was a Bill introduced by Mr. Burke, but had not seen it until I arrived when your agent showed me a copy of it. Upon reading it I discovered that it was exactly along the lines of the instructions which had been sent me by the Department, and I concluded that it had either been

prepared from the instructions I had received, or that my instructions had been prepared from this Bill. I found, upon looking at the Bill that it had been introduced by Mr. Burke on December 3rd, and that my instructions were dated Dec. 5th, two days later, and from reading the two and they corresponding exactly, I saw that this Bill had been prepared with the full knowledge and concurrence of the Department. Soon after my arrival I met you in council and we discussed the matter for four days along the lines of my instructions. You demanded certain things which I had not the discretionary power to grant and I therefore went to Washington to confer with the Secretary of the Interior and the Commissioner in relation to it. It was also necessary to confer with Mr. Burke to see if certain contemplated changes would meet his views, changes which I thought would be desirable, and I have told you the result of those conferences. I have made you a proposition today which is the limit of that which I can submit. You all seem to think that the Burke Bill is dead and gone, but any agreement that we may enter into will be along the lines of the Burke Bill, that is, the changes will be amendments to the [34] Burke Bill. This Bill has not yet become a law. There are none of you too ignorant in this room but to understand that your Tripp County lands have to be divided into three classes, with a certain stated price for each class. Some of you are trying to make it appear that there are only two classes of price, and that of the school lands mentioned. It is well known that in my talks with you I have explained time and again that this Bill stipulated \$5.00, \$4.00 and \$2.50 per acre, respectively, for your land. The amendments that will be necessary in the Burke Bill are the increase of price from \$5.00 per acre to \$6.00, for the first three months. Increasing the price of the next three months from \$4.00 to \$4.50 per acre, and

all the land after six months from the opening, including the school sections, \$2.50 per acre until the expiration of four years from date of opening, after which the surplus is to be sold at public auction to the highest bidder for cash at whatever it will bring. If that land is as good as you all say it is, it will all be taken in the first three months at \$6.00 per acre, but I do not believe that it will. I know that there is a good deal of land there that will not be taken at that first price, but I believe there will be a similar proportion there as was in Gregory County and that about three-fourths of it will be taken at the higher price. Therefore for the bulk of that cession you will receive \$6.00 an acre, and after that \$4.50 an acre, and all not taken under those two classes will be inferior land and will not be taken so quickly, but all untaken at the expiration of four years will be sold at public auction to the highest bidder. That is a clear statement of the case and should be readily understood by all of you. My friends, this is a matter representing a great many dollars to you people. Should this bill become a law, which I feel it will unless you concur in what I have suggested, in case it becomes a law, the proceeds from it will be much less than from the price which I have offered. [35] Besides the two other clauses in the proposition which you submitted to me and which I will incorporate, that is, providing for the million dollar fund, to draw 5% interest for ten years and the residue of the money remaining from the sale to be expended in the discretion of the Secretary of the Interior, upon a majority petition of you people through your agent. I will also incorporate a provision providing for allotments to all children born to you people so long as you have any unallotted lands. I know that such will be acceptable for the reason that Congress is considering a similar proposition this session. I believe that we might talk here until midnight and not

understand the matter any better than you must certainly now understand it, and I suggest that you decide upon some place as near here as possible where you can council among yourselves tomorrow. In the meantime, I will prepare an agreement along the lines I have spoken of and have it ready to read to you on Monday morning next, explaining it section by section and if it then meets your wishes it will be ready for your signature, every man to decide for himself without any undue influence being exerted upon him for or against. After hearing it read, if any of you sign it, well and good, and if not, there will be no harm done and we will part as friends.

TODD SMITH: When you came here first, you offered a proposition to us and we took it into consideration and lost a great deal of sleep here for several nights. The reason I go around and attend to these councils, I have a big family and I have a great many children and I want to do the best I can for them. I told you that we mentioned a certain price that we wanted at the time you were here before, and if those prices are changed I would not be in favor of it. You went away and came back and the price we asked for complies with what we agreed upon among ourselves at that time. The reason why I told you this I want to make my word good. I told you I was going to pull the other way if those prices were made different. My friend, who does this land belong to?

[36] INSPECTOR MCLAUGHLIN: It is the Rosebud Reservation, of course.

TODD SMITH: Yes, it belongs to us. Another question I want to ask you. Does the Great Father want this land himself?

INSPECTOR MCLAUGHLIN: It is for his people. The people of this great country.

TODD SMITH: He wants it for the people here in Dakota. You belong here in Dakota. You must remember

that is what land we have left. The reason why I say that I want to see my children and other children have some benefit of this land for 20 or 30 years ahead anyhow. I have not very many horses, but I have a few head. What I want for this land if it is going to be sold, I compare with my bunch of horses. I have not very many horses but they are classed. I want to class them as to the condition and put prices on them. That land ought to be sold the way I sell my horses. My friend, this is the last thing I want to say to you. You have made a coward out of the people on the Rosebud Reservation, and the reason why I say that is this. You say to us if we do not do this it is going to be made a law anyhow. My friend, you must take this into consideration that those poor people have friends in the East. All the people in the East do not want to kill us off. There are a few there who will try to protect us. If they are going to make a law to take this land away from us, it would be the same as stealing the land from us. Nothing just about it.

INSPECTOR MCLAUGHLIN: They will compensate you for it when it becomes a law as may be provided in the Act.

TODD SMITH: I want to tell you that I am going to stand by what I have told you.

INSPECTOR MCLAUGHLIN: My friend, Todd Smith's remarks were somewhat pointed and I wish to explain to all my friends here assembled that while I am a white man, my heart has grown fully one-half Indian. I have spent 37 years of my life with the Indians, [37] nearly all of my active years of manhood, and I have an earnest sympathy for the Indians of all tribes and particularly the Sioux, with whom I have been associated so closely for many years. If I had the power to make Indian Reservations, I would leave the Great Sioux Reservation undisturbed, because I know it would be

much more pleasing to the Sioux People, but, my friends, you must bear in mind that this is an age of progress. Everything is moving rapidly. We cannot stem the tide, but must go with the current else be stranded in a bend of the stream so driftwood. We have to meet conditions as they are and all surplus lands available in the United States will soon be opened to settlement. I fully believe that ten years hence there will not be a surplus foot of land on any reservation. We might just as well try to swim up your Rosebud Creek in the spring when deep snows in the hills are melting, and when the water rushed down like a torrent and carries everything before it, as to try to keep back settlement of unoccupied lands. Do not think, my friends, that I am speaking in a way threatening you or trying to force you, as such is far from my intentions. I regard it my duty as a friend of the Indian and as a representative of the Government, to tell you the facts just as I know them, believing that your Tripp County lands will be opened to settlement whether you consent to it or not, and I would wish you to be a party to the transaction by you people consenting to the reasonable proposition which I have presented. I will, as already stated, prepare an agreement and have it ready next Monday morning to submit and explain to you, after which it will be ready for the signatures of those who consent to its provisions.

HIGH HAWK: I understand just a small part of your words. A while back there was some words mentioned similar to this, and, my friend, you knock some of your words off. Whatever I say I want to say in a quiet way. I am glad when you say that you are going to show us liberty in touching the pen. You are not going to urge [38] anybody to touch or anyone not to touch. You say that whatever you have read here and what we want will become a law, and guarantee that it will become a law. I

will follow up your track. I am going down to Washington to hear. I am going down there when you go down and if you take any of these words off of the paper, I am coming back here and tell those people that they have taken some more words off of our friend. I always think that a man tells the truth whenever he says anything, therefore I say I am going to follow up your tracks and go to Washington. The reason I say this is I want you to carry it out. That is all I have to say.

Council adjourned at 5 o'clock, P.M.

Council met at 2 o'clock, P.M., Jan. 21, 1907.

INSPECTOR MCLAUGHLIN: My friends, I am pleased to see so many of you present. As I promised you in our last council, I have prepared an agreement along the lines we determined upon, strictly in accordance with what I explained to you and promised last Friday that I would do and I will now read the prepared agreement.

Reads agreement dated January 21st, 1907.

I have now read the agreement which has been very carefully worded and along the lines exactly as talked of with you in our previous councils. It is clear in every provision and your interests are well protected. There is not a word that could be added to this agreement that would improve it, and no word should be taken from it. I regard it a perfect document prepared along the lines on which we discussed and reached an agreement upon. I now ask you if this meets your wishes.

MANY VOICES: How. (Yes)

INSPECTOR MCLAUGHLIN: I have signed this agreement and it is ready for the signatures of any others. I have written my name here.

HOLLOW HORN BEAR: I want to know if that goes through all right, if it is successful, all those outside cattle (grazing permit) shall be taken off the reservation?

INSPECTOR MCLAUGHLIN: That is a question which I am unable to [39] answer definitely. As I regard it, it will take two years to have these allotments made, those who want to change their allotments and allot to the children, and it will be probably two years before Tripp County can be opened. I should think that during that time cattle may be ranging there and you will be receiving pay for it. After your Tripp County lands have been opened and as you will be receiving many cattle of your own, I do not think that there will be room for any stock on your reservation other than your own.

Hollow Horn Bear then stepped forward and signed the agreement, followed by others until 43 persons had attached their signatures thereto, whereupon, the council adjourned Sine Die, at five o'clock, P.M.

I hereby certify that the foregoing thirty-nine typewritten pages is a correct transcription of shorthand notes taken by me of Councils held by James McLaughlin, U.S. Indian Inspector, with the Indians of the Rosebud Reservation, So. Dak., from January 17th to 21st, inclusive, 1907.

/s/ Thomas F. Murphy
Assistant Clerk.

Rosebud Agency, S.D.)
January 23rd, 1907.)

[#21A]

(Excerpt from letter dated February 12, 1907 from Inspector McLaughlin to the Secretary of the Interior (N.A. Group 75 IBA letters received, 1881-1907, 17945-Land-1907)

[p.3] After a full discussion of the different propositions, I prepared the agreement embracing the provisions as agreed upon, which, after being read and explained to the Indians assembled, was accepted and the agreement was immediately signed by 43 Indians of those present. Then, in order to obtain the required number of signatures and make it unnecessary for the Indians to travel long distances from their homes to the Agency for that purpose in the cold weather, I visited the headquarters of the several districts of the reservation where the Indians of the respective districts met me, thus visiting Spring Creek, Cut Meat, Butte Creek, Bad Nation, Big White River, Bull Creek, and Ponca Creek stations, at which points I explained the provisions of the agreement to the Indians assembled and received the signatures of all concurring in the agreement.

Some opposition was met with in the beginning, particularly in the Cut Meat and Black Pipe districts, but it was

[#22]

(Enactment of H.R. 24987, 59th Congress 2d. Session (1907))

[Act of Mar. 2, 1907 ch. 2536, 34 Stat. 1230]

CHAP. 2536.—An Act To authorize the sale and disposition of a portion of the surplus or unallotted lands in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he is hereby, authorized and directed, as hereinafter provided, to sell or dispose of all that portion of the Rosebud Indian Reservation in South Dakota lying south of the Big White River and east of range twenty-five west of the sixth principal meridian, except such portions thereof as have been, or may hereafter be, allotted to Indians: *Provided*, That sections sixteen and thirty-six of the lands in each township shall not be disposed of, but shall be reserved for the use of the common schools and paid for by the United States at two dollars and fifty cents per acre, and the same are hereby granted to the State of South Dakota for such purpose.

Sec. 2. That the land shall be disposed of by proclamation, under the general provisions of the homestead and town-site laws of the United States, and shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the manner in which these lands may be settled upon, occupied, and entered by persons entitled to make entry thereof, and no person shall be permitted

to settle upon, occupy, or enter any of said lands except as prescribed in such proclamation: *Provided*, That prior to the said proclamation the Secretary of the Interior, in his discretion, may permit Indians who have an allotment within the Rosebud Reservation to relinquish such allotment and to receive in lieu thereof an allotment anywhere within said reservation, and he shall also allot one hundred and sixty acres of land to each child of Indian parentage whose father or mother is or was, in case of death, a duly enrolled member of the Sioux tribe of Indians belonging on the Rosebud Reservation who is living at the time of the passage and approval of this Act and who has not heretofore received an allotment: *Provided further*, That the rights of honorably discharged Union soldiers and sailors of the late civil and Spanish wars or Philippine insurrection, as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes, as amended by the Act of March first, nineteen hundred and one, shall not be abridged.

Sec. 3. That the price of said lands entered as homesteads under the provisions of this Act shall be as follows: Upon all land entered or filed upon within three months after the same shall be opened for settlement and entry, six dollars per acre, and upon all land entered or filed upon after the expiration of three months and within six months after the same shall have opened for settlement and entry, four dollars and fifty cents per acre; after the expiration of six months after the same shall have been opened for settlement and entry the price shall be two dollars and fifty cents per acre. The price shall be paid in accordance with rules and regulations to be prescribed by the Secretary of the Interior upon the following terms: One-fifth of the purchase price to be paid in cash at the time of entry,

and the balance in five equal annual installments, to be paid in one, two, three, four, and five years, respectively, from and after the date of entry. In case any entryman fails to make the annual payments, or any of them, promptly when due, all rights in and to the land covered by his entry shall cease, and any payments theretofore made shall be forfeited and the entry canceled, and the lands shall be reoffered for sale and entry under the provisions of the homestead law at the same price that it was first entered: *And provided*, That nothing in this Act shall prevent homestead settlers from commuting their entries under section twenty-three hundred and one, Revised Statutes, by paying for the land entered the price fixed herein, receiving credit for payments previously made. In addition to the price to be paid for the land, the entryman shall pay the same fees and commissions at the time of commutation or final entry as now provided by law, where the price of the land is one dollar and twenty-five cents per acre, and when the entryman shall have complied with all the requirements and terms of the homestead laws as to settlement and residence and shall have made all the required payments aforesaid he shall be entitled to a patent for the lands entered: *And provided further*, That all lands remaining undisposed of at the expiration of four years from the opening of the said lands to entry shall be sold to the highest bidder for cash at not less than two dollars and fifty cents per acre, under rules and regulations to be prescribed by the Secretary of the Interior, and that any lands remaining unsold after the said lands have been opened to entry for seven years may be sold to the highest bidder for cash, without regard to the above minimum limit of price.

Sec. 4. That the Secretary of the Interior is authorized to reserve from said lands such tracts for town-site

purposes as in his opinion may be required for the future public interests, and he may cause the same to be surveyed into blocks and lots and disposed of under such regulations as he may prescribe, in accordance with section twenty-three hundred and eighty-one of the United States Revised Statutes. The net proceeds derived from the sale of such lands shall be credited to the Indians as hereinafter provided.

Sec. 5. That from the proceeds arising from the sale and disposition of the lands aforesaid, exclusive of the customary fees and commissions, there shall be deposited in the Treasury of the United States, to the credit of the Indians belonging and having tribal rights on the Rosebud Reservation, in the State of South Dakota, the sum of one million dollars, which shall draw interest at three per centum per annum for ten years, the interest to be paid to the Indians per capita in cash annually, share and share alike; that at the expiration of ten years, after one million dollars shall have been deposited as aforesaid, the said sum shall be distributed and paid to said Indians per capita in cash; that the balance of the proceeds arising from the sale and disposition of the lands as aforesaid shall be deposited in the Treasury of the United States to the credit of said Indians and shall be expended for their benefit under the direction of the Secretary of the Interior, and he may, in his discretion, upon an application by a majority of said Indians, pay a portion of the same to the Indians in cash, per capita, share and share alike, if in his opinion such payments will be for the best interests of said Indians.

Sec. 6. That sections sixteen and thirty-six of the lands in each township within the tract described in section one of this Act shall not be subject to entry, but shall be reserved for the use of the common schools

and paid for by the United States at two dollars and fifty cents per acre, and the same are hereby granted to the State of South Dakota for such purpose; and in case any of said sections, or parts thereof, are lost to said State of South Dakota by reason of allotments thereof to any Indian or Indians, or otherwise, the governor of said State, with the approval of the Secretary of the Interior, is hereby authorized, within the tract described herein, to locate other lands not occupied not exceeding two sections in any one township, which shall be paid for by the United States as herein provided, in quantity equal to the loss, and such selections shall be made prior to the opening of such lands to settlement.

Sec. 7. That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of one hundred and sixty-five thousand dollars, or so much thereof as may be necessary, to pay for the lands granted to the State of South Dakota, as provided in section six of this Act. And there is hereby appropriated the further sum of fifteen thousand dollars, or so much thereof as may be necessary, for the purpose of making the allotments provided for herein: *Provided*, That the same shall be reimbursed to the United States from the proceeds received from the sale of the lands described herein or from any money in the Treasury belonging to said Rosebud Indians.

Sec. 8. That nothing in this Act contained shall in any manner bind the United States to purchase any portion of the land herein described, except sections sixteen and thirty-six or the equivalent in each township, or to dispose of said land except as provided herein, or to guarantee to find purchasers for said lands or any portion thereof, it being the intention of this Act that the United States shall act as trustee for said

Indians to dispose of said lands and to expend and pay over the proceeds received from the sale thereof only as received, as herein provided: *Provided*, That nothing in this Act shall be construed to deprive the said Indians of the Rosebud Reservation, in South Dakota, of any benefits to which they are entitled under existing treaties or agreements not inconsistent with the provisions of this Act.

Approved, March 2, 1907.

[#22A]

(Legislature history of H.R. 24987 which became the Act of March 2, 1907)

[41 Cong. Rec. 241 (1906-1907)]

Rosebud Reservation: bills for sale of surplus lands in (see bills S. 6618; H.R. 20527, 24987, 25608).

[41 Cong. Rec. 268 (1906-1906)]

H.R. 24987—

To authorize the sale and disposition of a portion of the surplus or unallotted lands in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect.

Mr. Burke of South Dakota: Committee on Indian Affairs 1782.—Reported back with amendment (H.R. Report 7613) 3004.—Debated, amended, and passed House 3103-3105.—Referred after being debated, to Senate Committee on Indian Affairs 3182, 3183.—Reported back with amendments (S. Report 6838), 3264.—Debated, amended, and passed Senate 3323.—House disagrees to Senate amendment 3552.) Senate insists upon its amendments (*omitted in Record*).—Conference appointed 3552.—Conference report (H.R. Report 8109) made, submitted, and agreed to 3996, 4120, 4121.—Examined and signed 4312, 4316, 4402.—Approved by President 4630.

[41 Cong. Rec. 1782 (1907)]

PUBLIC BILLS RESOLUTIONS and MEMORIALS
INTRODUCED.

* * *

By Mr. BURKE of South Dakota: A bill (H.R. 24987) to authorize the sale and disposition of a portion of the surplus or unallotted lands in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect—to the Committee on Indian Affairs.

[41 Cong. Rec. 3004 (1907)]

Mr. BURKE of South Dakota, from the Committee on Indian Affairs, to which was referred the bill of the House (H.R. 24987) to authorize the sale and disposition of a portion of the surplus or unallotted lands in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect, reported the same with amendment, accompanied by a report (No. 7613); which said bill and report were referred to the Committee of the Whole House on the state of the Union.

[41 Cong. Rec. 3103-3105 (1907)]

SALE OF UNALLOTTED LANDS IN
ROSEBUD RESERVATION.

Mr. BURKE of South Dakota. Mr. Speaker, I ask unanimous consent for the present consideration of the bill (H.R. 24987) to authorize the sale and disposition of portion of the surplus or unallotted lands in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect.

The Clerk read the bill, as follows:

Be it enacted, etc., That the Secretary of the Interior be, and he is hereby, authorized and directed, as hereinafter provided, to sell or dispose of all that portion of the Rosebud Indian Reservation in South Dakota lying south of the Big White River and east of range 25 west of the sixth principal meridian, except such portions thereof as have been, or may hereafter be, allotted to Indians: *Provided,* That sections 16 and 36 of the lands in each township shall not be disposed of, but shall be reserved for the use of the common schools and paid for by the United States at \$2.50 per acre, and the same are hereby granted to the State of South Dakota for such purpose.

Sec. 2. That the land shall be disposed of by proclamation, under the general provisions of the homestead and town-site laws of the United States, and shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the manner in which these lands may be settled upon, occupied, and entered by persons entitled to make entry thereof, and no person shall be permitted to settle upon, occupy, or enter any of said lands except as prescribed in

such proclamation: *Provided*, That prior to the said proclamation the Secretary of the Interior, in his discretion, may permit Indians who have an allotment within the Rosebud Reservation to relinquish such allotment and to receive in lieu thereof an allotment anywhere within said reservation, and he shall also allot 160 acres of land to each child of Indian parentage whose father or mother is or was, in case of death, a duly enrolled member of the Sioux tribe of Indians belonging on the Rosebud Reservation who is living at the time of the passage and approval of this act and who has not heretofore received an allotment: *Provided further*, That the rights of honorably discharged Union soldiers and sailors of the late civil and Spanish wars or Philippine insurrection, as defined and described in sections 2304 and 2305 of the Revised Statutes, as amended by the act of March 1, 1901, shall not be abridged.

Sec. 3. That the price of said lands entered as homesteads under the provisions of this act shall be as follows: Upon all land entered or filed upon within three months after the same shall be opened for settlement and entry, \$6 per acre, and upon all land entered or filed upon after the expiration of three months and within six months after the same shall have opened for settlement and entry, \$4.50 per acre; after the expiration of six months after the same shall have been opened for settlement and entry the price shall be \$2.50 per acre. The price shall be paid in accordance with rules and regulations to be prescribed by the Secretary of the Interior upon the following terms: One-fifth of the purchase price to be paid in cash at the time of entry, and the balance in five equal annual installments, to be paid in one, two, three, four, and five years, respectively, from and after the date of entry. In case any entryman fails to

make the annual payments, or any of them, promptly when due, all rights in and to the land covered by his entry shall cease, and any payments theretofore made shall be forfeited and the entry canceled, and the lands shall be reoffered for sale and entry under the provisions of the homestead law at the same price that it was first entered: *And provided*, That nothing in this act shall prevent homestead settlers from commuting their entries under section 2301, Revised Statutes, by paying for the land entered the price fixed herein, receiving credit for payments previously made. In addition to the price to be paid for the land, the entryman shall pay the same fees and commissions at the time of commutation or final entry as now provided by law, where the price of the land is \$1.25 per acre, and when the entryman shall have complied with all the requirements and terms of the homestead laws as to settlement and residence and shall have made all the required payments aforesaid he shall be entitled to a patent for the lands entered: *And provided further*, That all lands remaining undisposed of at the expiration of four years from the opening of the said lands to entry shall be sold to the highest bidder for cash at not less than \$2.50 per acre, under rules and regulations to be prescribed by the Secretary of the Interior, and that any lands remaining unsold after the said lands have been opened to entry for seven years may be sold to the highest bidder for cash, without regard to the above minimum limit of price.

Sec. 4. That the Secretary of the Interior is authorized to reserve from said lands such tracts for town-site purposes as in his opinion may be required for the future public interests, and he may cause the same to be surveyed into blocks

and lots and disposed of under such regulations as he may prescribe. In accordance with section 2381 of the United States Revised Statutes. The net proceeds derived from the sale of such lands shall be credited to the Indians as hereinafter provided.

Sec. 5. That from the proceeds arising from the sale and disposition of the lands aforesaid, exclusive of the customary fees and commissions, there shall be deposited in the Treasury of the United States, to the credit of the Indians belonging and having tribal rights on the Rosebud Reservation, in the State of South Dakota, the sum of \$1,000,000, which shall draw interest at 8 per cent per annum for ten years, the interest to be paid to the Indians per capita in cash annually, share and share alike; that at the expiration of ten years, after \$1,000,000 shall have been deposited as aforesaid, the said sum shall be distributed and paid to said Indians per capita in cash; that the balance of the proceeds arising from the sale and disposition of the lands as aforesaid shall be deposited in the Treasury of the United States to the credit of said Indians and shall be expended for their benefit under the direction of the Secretary of the Interior, and he may, in his discretion, upon an application by a majority of said Indians, pay a portion of the same to the Indians in cash, per capita, share and share alike, if in his opinion such payments will be for the best interests of said Indians.

Sec. 6. That sections 16 and 36 of the lands in each township within the tract described in section 1 of this act shall not be subject to entry, but shall be reserved for the use of the common schools and paid for by the United States at \$2.50 per acre, and the same are hereby granted to the State of South Dakota for such purpose; and in case any of said sections, or parts thereof, are lost

to said State of South Dakota by reason of allotments thereof to any Indian or Indians, or otherwise, the governor of said State, with the approval of the Secretary of the Interior, is hereby authorized, within the tract described herein, to locate other lands not occupied, not exceeding 2 sections in any one township, which shall be paid for by the United States as herein provided, in quantity equal to the loss, and such selections shall be made prior to the opening of such lands to settlement.

Sec. 7. That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$165,000, or so much thereof as may be necessary, to pay for the lands granted to the State of South Dakota, as provided in section 6 of this act.

Sec. 8. That nothing in this act contained shall in any manner bind the United States to purchase any portion of the land herein described, except sections 16 and 36 or the equivalent in each township, or to dispose of said land except as provided herein, or to guarantee to find purchasers for said lands or any portion thereof, it being the intention of this act that the United States shall act as trustee for said Indians to dispose of said lands and to expend and pay over the proceeds received from the sale thereof only as received, as herein provided: *Provided*, That nothing in this act shall be construed to deprive the said Indians of the Rosebud Reservation, in South Dakota, of any benefits to which they are entitled under existing treaties or agreements not inconsistent with the provisions of this act.

The following committee amendments were read:

Page 2, line 16, after the word "is," insert "or was, in case of death."

Page 2, line 17, strike out the word "Rosebud" and insert the word "Sioux:" and after the word "Indians" insert the words "belonging on the Rosebud Reservation."

Page 3, line 21, after the word "law," insert "at the same price that it was first entered."

Section 3, page 3, amend as follows: Line 4, after the word "entry," strike out "five" and insert "six."

Line 7, after the word "dollars," insert "and 50 cents."

Section 5, page 5, amend as follows: Line 9, after the word "at," strike out the word "five" and insert "three."

The SPEAKER. Is there objection?

Mr. WILLIAMS. Mr. Speaker, reserving the right to object to the request to consider the bill in the House as in Committee of the Whole, the bill seems to be a rather long and complicated one, deals with a very important matter, and ought at least to receive very careful consideration. I will further state to the gentleman from South Dakota that I do not notice a single minority member of the committee from whence the bill comes, and so I have no one of whom to take counsel. I reserve the right to object.

Mr. BURKE of South Dakota. Mr. Speaker, the bill has the unanimous report of the Committee on Indian Affairs, in which committee it was very carefully considered. The bill is substantially in accord with an agreement which has just been made with the Indians, signed by forty-two more than a majority of the male Indians over the age of 18 years. It is in line with the recent bills that have been passed affecting the sale of the Indian reservations. It is along the line of the bill which passed in the Fifty-eighth Congress for the sale of that portion of this same reservation that is located

in Gregory County. The maximum price of the land in that bill was fixed at \$4 per acre, while the maximum price in this bill is \$6 per acre.

The Indians, as I have stated before, have agreed to the disposition of it under the terms of the bill. They will have left, after this land is disposed of, a reservation that is substantially 50 miles square, and there are only 5,000 Indians. I certainly hope, in view of the fact that no opposition developed from any source to the bill in its present form, that there will be no objection to the consideration of it at this time.

Mr. FINLEY. Will the gentleman yield for a question?

Mr. BURKE of South Dakota. Certainly.

Mr. FINLEY. Does not the gentleman think that the State of South Dakota should have land for school purposes, as is provided in the bill, and that the Government should pay for the land?

Mr. BURKE of South Dakota. I will answer that question by stating that in at least six different instances since South Dakota was admitted into the Union Congress has made an appropriation and paid for the school sections under the guaranty that was given to the State when we came into the Union.

Mr. FINLEY. Why is that where certain sections have been allotted or patented the Government is called upon to pay for sections 16 and 36?

Mr. BURKE of South Dakota. That refers to sections that have been allotted to the Indians, and it has always been the custom where school sections have been allotted to give to the State in lieu of such sections other sections, not exceeding two in any township.

Mr. FINLEY. Is it true that some of these lands have been allotted to the Indians?

Mr. BURKE of South Dakota. It is true that a portion of the lands have been allotted to the Indians.

Mr. FINLEY. Does the gentleman think the Government should be called upon to pay to the State of South Dakota for lands allotted to the Indians? Doesn't the land belong to the Indians? I ask the gentleman if that practice has been the usual one?

Mr. BURKE of South Dakota. We have heretofore appropriated to pay for sections 16 and 36 in every township, or where they have been taken to pay for a section in lieu thereof.

Mr. FINLEY. Has that been the rule where lands are allotted to Indians?

Mr. BURKE of South Dakota. Yes; that has been the rule and was the rule in the former Rosebud bill which passed the Fifty-eighth Congress, and is exactly in line with this provision, and the price is the same.

Mr. FITZGERALD. Will the gentleman yield for a question?

Mr. BURKE of South Dakota. Certainly.

Mr. FITZGERALD. The Commissioner of Indian Affairs recommended that all after the enacting clause be stricken out and the agreement be inserted and ratified. That has not been done, and that has not been the practice for several years. I wish to ask this question: Have the provisions of the treaty been inserted in this bill?

Mr. BURKE of South Dakota. I may say to the gentleman that they have been.

Mr. FITZGERALD. Is the gentleman able to state how many acres were sold at \$4 an acre under the bill which was passed opening that portion of the Rosebud Reservation of Gregory County two or three years ago?

Mr. BURKE of South Dakota. Somewhere near 250,000 to 300,000 acres out of 400,000 acres.

Mr. FITZGERALD. At \$4 per acre?

Mr. BURKE of South Dakota. Yes. The land that sold readily sold at \$4 per acre. But very little sold at the \$3 price. Since that the rougher portions have been taken at \$2.50. I may say to the gentleman, as he was familiar with that legislation, that under the agreement that was made with the Indians they had agreed to sell that land for \$1,040,000; that the opposition to that legislation came from the fact that the friends of the Indians were claiming they would not get as much under the terms of the bill as they would have gotten under the treaty. They will, however, receive nearly twice as much, and have already received over \$900,000, and if those that have taken lands pay up, as they undoubtedly will, there will be over \$1,600,000 received, with nearly 100,000 acres to be disposed of, which will be sold ultimately.

Mr. FITZGERALD. One of the objections that have since been made to the method by which that reservation was opened is based upon this alleged statement of facts, that a great number of persons who could not possibly obtain homesteads under the bill were brought great distances into South Dakota and that great suffering resulted from the fact that the time they were required to remain there practically exhausted their resources, and they had great difficulty, after their disappointment, in leaving South Dakota.

Mr. BURKE of South Dakota. I do not think that statement is founded on any facts.

Mr. FITZGERALD. The gentleman is familiar, of course, with that particular locality?

Mr. BURKE of South Dakota. Entirely so, and I was at the opening at the time it took place.

Mr. MANN. Will the gentleman yield for a question?

Mr. BURKE of South Dakota. Certainly.

Mr. MANN. How many people are supposed to have gone to South Dakota at the time of this previous opening?

Mr. BURKE of South Dakota. The total number of registrations was 105,000.

Mr. MANN. And how many people entered land?

Mr. BURKE of South Dakota. Twelve to fifteen hundred. I don't remember exactly, but not to exceed 2,000.

Mr. MANN. Not over 10 per cent?

Mr. BURKE of South Dakota. No.

Mr. MANN. What does the gentleman assume was the average cost to the people who went there, and how long a time did they have to remain there?

Mr. BURKE of South Dakota. They had to remain only a part of one day, or not to exceed one day. I don't know that there is any way of estimating what each one spent, but from eight to ten dollars.

Mr. MANN. They had to go there to make the registration?

Mr. BURKE of South Dakota. They had to go into the State, but not right to where the land is.

Mr. MANN. They had to go into the State to be registered?

Mr. BURKE of South Dakota. Yes.

Mr. MANN. Then they had to remain there if they wanted to obtain and fulfill a chance?

Mr. BURKE of South Dakota. No; they did not.

Mr. MANN. Oh, they did not have to remain there. Of course they could go home and come back.

Mr. BURKE of South Dakota. I may say to the gentleman they did not remain. Those that were successful at the drawing were noticed and had plenty of time to go there and get their filing. I think it was thirty days.

Mr. MANN. I know the complaint was made to me very bitterly at the time this opening was had, from people in our town who wanted to get in on the ground floor, that it was an expensive proposition—an expensive gamble. That is what it was. It has been charged that a great deal of land that was then sold at \$4 per acre was worth nearer \$40. Can the gentleman inform us about that?

Mr. BURKE of South Dakota. That is not true. Four dollars an acre was a fair price for the land. In fact, it was more, in my opinion, than I thought it was worth at the time, and it was disposed of largely because the people had an idea that it was of greater value than it was, due to the fact that it had received so much advertising during the time the legislation was in progress.

Mr. MANN. How much land is covered by this bill?

Mr. BURKE of South Dakota. About 1,000,000 acres.

The SPEAKER. Is there objection? [After a pause.] The chair hears none. The question is on the amendments.

The question was taken; and the amendments were agreed to.

The SPEAKER. The question now is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, read the third time, and passed.

On motion of Mr. Burke of South Dakota, a motion to reconsider the last vote was laid on the table.

[41 Cong. Rec. 3182-3183 (1907)]

ROSEBUD INDIAN RESERVATION LAND.

Mr. GAMBLE. I request the Senator from Vermont to yield to me that I may ask for the consideration of a bill which has come from the House of Representatives.

The VICE-PRESIDENT. Does the Senator from Vermont yield to the Senator from South Dakota.

Mr. PROCTOR. I do.

Mr. GAMBLE. I ask that House bill 24987, which came from the House to-day, be laid before the Senate, and I ask unanimous consent for its immediate consideration.

The VICE-PRESIDENT laid before the Senate the bill (H. R. 24987) to authorize the sale and disposition of a portion of the surplus or unallotted lands in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect; which was read the first time by its title, and the second time at length, and by unanimous consent, the Senate as in Committee of the Whole, proceeded to its consideration.

Mr. GAMBLE. I send up two amendments to the bill.

The VICE-PRESIDENT. The Senator from South Dakota proposes an amendment, which will be stated.

The Secretary. On page 5, line 14, strike out the word "three" and insert "five" in lieu thereof; so that it will read:

Draw interest at 5 per cent per annum for ten years.

The amendment was agreed to.

The VICE-PRESIDENT. The second amendment proposed by the Senator from South Dakota will be stated.

The Secretary. On page 6, after the word "act" in line 24, it is proposed to insert:

And there is hereby appropriated the further sum of \$15,000, or so much thereof as may be necessary, for the purpose of making the allotments provided for herein.

The amendment was agreed to.

Mr. KEAN. Mr. President, has this bill been reported by a committee?

The VICE-PRESIDENT. It is a House bill which the Chair laid before the Senate at the request of the Senator from South Dakota.

Mr. KEAN. Has it been before a Senate committee?

Mr. GAMBLE. A bill with substantially the same provisions was reported from the Committee on Indian Affairs to the Senate on the 13th of December. The only proposition there was that instead of a valuation or price fixed the lands should be appraised. A report was not filed for the reason that an inspector was out negotiating a treaty. The inspector succeeded in negotiating a treaty, and on the 14th of February the ratification of the treaty was authorized by bill from the Committee on Indian Affairs in the Senate. This bill provides substantially the form of the agreement, and the two amendments which I have offered make this bill conform to the agreement.

Mr. KEAN. I do not think the practice is a good one. Therefore I must object.

The VICE-PRESIDENT. Objection is made.

Mr. GAMBLE. I trust no objection will be interposed. It is a matter of great importance to the people of my State.

Mr. KEAN. Let the bill go to the committee. I have no objection to the bill, but the practice is not a good one.

Mr. GAMBLE. I will be very glad to make myself plain to the Senator from New Jersey. This matter has been considered twice by the Committee on Indian Affairs and has been favorably reported. The bill that was read here this morning and which has passed the House is in the identical language of the agreement. It is in conformity to the agreement with the Sioux tribe of Indians and with the statute, and it is a matter of great importance. The lands to be opened embrace about a million acres lying immediately west of the Rosebud Reservation, which was opened three years ago. If it is referred to the committee, the danger will be that it can not be considered at this session.

Mr. LODGE. Will the Senator from South Dakota allow me to make a suggestion?

Mr. GAMBLE. Certainly.

Mr. LODGE. If there is a similar bill on the Calendar covering the same subject-matter, it is open to the Senator to substitute this bill for the Senate bill.

Mr. KEAN. That is correct.

Mr. LODGE. He can take it up by unanimous consent tomorrow.

Mr. GAMBLE. I am very anxious to have the matter disposed of. It is one of great importance to the people of my State.

Mr. LODGE. I was pointing out to the Senator how he can pass it.

The VICE-PRESIDENT. Is there objection to the consideration of the bill?

Mr. ALDRICH. If the matter is of such supreme importance to anybody as the Senator from South Dakota suggests, it is very easy to refer the bill to the Committee on Indian Affairs and have it reported back at once. Otherwise we will establish a precedent which would be an extremely dangerous one, especially if it is

an important bill. I think it ought to go to the committee and be reported back in the usual way.

Mr. GAMBLE. I do not want to be unduly persistent in the matter. Possibly I do not make myself plain.

The VICE-PRESIDENT. The Chair will suggest that the debate is proceeding by unanimous consent. Is there objection to the explanation to be made by the Senator from South Dakota?

Mr. ALDRICH. I do not object to the explanation, but I shall insist that the bill go to the committee and be considered in the usual way.

Mr. GAMBLE. In reply to that, I want to say that this measure has been considered fully by the Committee on Indian Affairs of the Senate. The bill that is reported by the Senate Committee on Indian Affairs is the same language as this bill. This is a House bill. It passed the House Saturday. I called it up in this form so that there might be expedition in its passage. If it goes to the committee, the danger is there will not be opportunity to have it considered and will deny to it the privilege of passing at this session.

Mr. CLAY. Mr. President—

The VICE-PRESIDENT. Does the Senator from South Dakota yield to the Senator from Georgia?

Mr. GAMBLE. Certainly.

Mr. CLAY. I understood the Senator to say that a bill identical with this was before the Committee on Indian Affairs in the Senate, and had been reported by the Senate committee and is now on the Calendar.

Mr. GAMBLE. It is not on the Calendar.

Mr. CLAY. Then this bill could not be substituted for it. That is true.

Mr. GAMBLE. The report was authorized last Thursday.

The VICE-PRESIDENT. If there is objection, the bill will be referred to the Committee on Indian Affairs.

Mr. ALDRICH. I thought I made my position plain about it.

The VICE-PRESIDENT. The Chair so understood.

Mr. ALDRICH. It is not necessary to reiterate it.

The VICE-PRESIDENT. The Chair was about to state that the bill will be referred to the Committee on Indian Affairs.

[41 Cong. Rec. 3264 (1907)]

REPORTS OF COMMITTEES.

* * *

Mr. GAMBLE, from the Committee on Indian Affairs, to whom was referred the bill (H. R. 24987) to authorize the sale and disposition of a portion of the surplus or unallotted lands in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect, reported it with amendments, and submitted a report thereon.

[41 Cong. Rec. 3323 (1907)]

ROSEBUD INDIAN RESERVATION, S. Dak.

The bill (H. R. 24987) to authorize the sale and disposition of a portion of the surplus or unallotted

lands in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect, was considered as in Committee of the Whole.

The bill had been reported from the Committee on Indian Affairs with an amendment, to insert at the end of section 7 the following:

And there is hereby appropriated the further sum of \$15,000, or so much thereof as may be necessary, for the purpose of making the allotments provided for herein.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read the third time, and passed.

[41 Cong. Rec. 3552 (1907)]

UNALLOTTED LANDS IN ROSEBUD RESERVATION.

The SPEAKER laid before the House the bill (H. R. 24987) to authorize the sale and disposition of a portion of the surplus or unallotted lands in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect, with Senate amendments.

Mr. SHERMAN. Mr. Speaker, I ask unanimous consent to nonconcur in the Senate amendments and ask for a conference.

Mr. WILLIAMS. What are the amendments?

Mr. SHERMAN. There are two main amendments. One is changing the rate of interest the United States is to pay on the fund which is to be put into the Treasury. The House fixes the rate of interest on such fund at 3 per cent. The Senate changed it to 5 per cent.

The other provision is an appropriation for \$15,000, which should be made reimbursable, but the Senate did not make it so.

The SPEAKER. Does the gentleman from New York offer an amendment?

Mr. SHERMAN. No; I ask unanimous consent to nonconcur and go to conference.

The SPEAKER. The gentleman from New York asks unanimous consent to nonconcur in the Senate amendments and ask for a conference. Is there objection?

There was no objection.

The SPEAKER appointed as conferees on the part of the House Mr. Sherman, Mr. Burke of South Dakota, and Mr. Stephens of Texas.

[41 Cong. Rec. 3996 (1907)]

ROSEBUD (SOUTH DAKOTA) INDIAN RESERVATION.

Mr. GAMBLE submitted the following conference report:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 24987) to authorize the sale and disposition of a portion of the surplus or unallotted

lands in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect, having met in full and free conference, have agreed to recommend and do recommend to their respective Houses as follows: That the Senate recede from its amendment No. 1.

That the House recede from its disagreement to the amendment of the Senate No. 2 and agree to the same with an amendment, adding the following proviso: "Provided, That the same shall be reimbursed to the United States from the proceeds received from the sale of lands described herein or from any money in the Treasury belonging to said Rosebud Indians;" and the Senate agreed to the same.

Robert J. Gamble,
Frank B. Brandegee,
Fred T. Dubois,

Managers on the part of the Senate.

J. S. Sherman,
Chas. H. Burke,
John H. Stephens,

Managers on the part of the House.

The report was agreed to.

[41 Cong. Rec. 4120-4121 (1907)]

ROSEBUD INDIAN RESERVATION.

Mr. BURKE of South Dakota. Mr. Speaker, I call up conference report on the bill H. R. 24987.

The SPEAKER. The Clerk will read the title.

The Clerk read as follows:

H. R. 24987. An act authorizing the sale and disposition of a portion of the surplus of unallotted lands in the Rosebud Reservation, in the State of South Dakota, and making appropriations and provision for carrying the same into effect.

Mr. BURKE of South Dakota. Mr. Speaker, I ask unanimous consent that the statement may be read in lieu of the report.

The conference report and statement are as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 24987) to authorize the sale and disposition of a portion of the surplus or unallotted lands in the Rosebud Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect, having met in full and free conference, have agreed to recommend and do recommend to their respective Houses as follows: That the Senate recede from its amendment numbered 1.

That the House recede from its disagreement to the amendment of the Senate numbered 2, and agree to the same with an amendment, adding the following proviso: "Provided, That the same shall be reimbursed to the United States from the proceeds received from the sale of the lands described herein or from any money in the Treasury belonging to said Rosebud Indians;" and the Senate agree to the same.

Robert J. Gamble,
Frank B. Brandegee,
Fred T. Dubois.

Managers on the part of the Senate.

J. S. Sherman,
Chas. H. Burke,
John H. Stephens.

Managers on the part of the House.

The statement was read as follows:

STATEMENT.

The result of the conference is that the Senate recedes from its amendment No. 1.

The bill provides that from the proceeds derived from the sale of the land there shall be a million-dollar fund deposited in the Treasury and interest shall be paid thereon for ten years. The bill of the House named the rate of interest at 3 per cent; the amendment of the Senate changed the rate from 3 to 5. The House recedes from its disagreement to amendment No. 2 with an amendment. This amendment of the Senate provides an appropriation of \$15,000, or so much thereof as may be necessary for the purpose of making the allotments provided by the bill. The amendment is a proviso that the same shall be reimbursed to the United States from the proceeds received from the sale of the lands described in the bill or from any money in the Treasury belonging to said Rosebud Indians.

J. S. Sherman,
Chas. H. Burke,
John H. Stephens.

Managers on the part of the House.

The SPEAKER. The question is on agreeing to the conference report.

The question was taken; and the conference report was agreed to.

[41 Cong. Rec. 4312 (1907)]

H. R. 24987. An act to authorize the sale and disposition of a portion of the surplus or unallotted

lands in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect.

[41 Cong. Rec. 4316 (1907)]

H. R. 24987. An act to authorize the sale and disposition of a portion of the surplus or unallotted lands in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect;

[41 Cong. Rec. 4402 (1907)]

H. R. 24987. An act to authorize the sale and disposition of a portion of the surplus or unallotted lands in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect;

[41 Cong. Rec. 4630 (1907)]

H. R. 24987. An act to authorize the sale and disposition of a portion of the surplus or unallotted lands in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect;

(#22B — House of Representatives report to accompany H.R. 24987)

[H. R. Rep. No. 7613, 59th Cong. 2d Sess. 1-8 (1907)]

SALE AND DISPOSITION OF CERTAIN LANDS IN
ROSEBUD INDIAN RESERVATION, S. DAK.

February 14, 1970.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. Burke, of South Dakota, from the Committee on Indian Affairs, submitted the following

REPORT.

[To accompany H.R. 24987.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 24987) to authorize the sale and disposition of a portion of the surplus or unallotted lands in the Rosebud Indian Reservation, in South Dakota, and making an appropriation and provision to carry the same into effect, having had the same under consideration, submit the following report and recommend that the bill be amended as follows:

Page 2, line 16, after the word "is," insert "or was, in case of death."

Page 2, line 17, strike out the word "Rosebud" and insert the word "Sioux;" and after the word "Indians" insert the words "belonging on the Rosebud Reservation."

Page 3, line 21, after the word "law," insert "at the same price that it was first entered."

Section 3, page 3, amend as follows: Line 4 after the word "entry,," strike out "five" and insert "six."

Line 7, after the word "dollars," insert "and fifty cents."

Section 5, page 5, amend as follows: Line 9, after the word "at," strike out the word "five" and insert "three."

And as so amended that the bill do pass.

The purpose of this bill is to authorize the opening and sale of that portion of the Rosebud Reservation in South Dakota known as Tripp County, and it affects all that portion of the reservation east of range 25 of the fifth principal meridian south of the Big White River, and embraces about 1,000,000 acres.

In the second session of the Fifty-eighth Congress a law was passed authorizing a sale of so much of this same reservation as was located in Gregory County, the tract affected being about one-half the area embraced in the tract affected by the pending bill and lying immediately adjoining and east of Tripp County.

The sale and disposition of the lands in Gregory County have proven very satisfactory, and the lands have been disposed of at the prices provided in the law, except such portions involving about 100,000 acres which are rough and undesirable, being bluffs along the Missouri River.

The opponents to the passage of the aforesaid law based their claims largely upon the assumption that by the terms that were proposed by this law the Indians would not receive as much as they would have received by the terms of an agreement which they made for the cession and sale of that portion of their reservation, namely, \$1,040,000. The opening did not take place

until August, 1904, and yet up to February 2, 1907, there had been paid into the Treasury and credited to the Indians by reason of this sale the sum of \$925,976.38, as will be shown by the following letter from the Secretary of the Treasury:

Treasury Department,
Office of the Secretary,
Washington, February 2, 1907.

Sir: In reply to your request of the 2d instant to be informed as to the amount of money which has been received and credited to Rosebud Indians of South Dakota by reason of the sale of a portion of the Rosebud Reservation in Gregory County, S. Dak., disposed of under the act of Congress of April 23, 1904, I have the honor to advise you that the receipts on this account covered into the Treasury under the act in question amount to \$852,117.63, and that by the same act of the school sections of the Rosebud Reservation granted to the State, and for which the fund of the Indians was to receive payment, have increased said fund in the sum of \$73,858.75, so that the fund of "Proceeds of Rosebud Reservation, S. Dak.," under the said act has amounted to date to \$925,976.38.

Respectfully,

L. M. Shaw,
Secretary.

Hon. Charles H. Burke,
House of Representatives.

From a careful estimate of the amount that will be received from those who have entered the land and have not yet paid therefor in full, there will be about \$700,000 more paid into the Treasury, and besides there are 100,000 acres to be disposed of that ought to

sell for not less than \$200,000, so that as the result of the law passed as before stated, the Indians will receive in the end nearly double what they would have gotten had their agreement been ratified. The price of the land in that law is \$4 per acre during the first three months, \$3 during the second three months, and then \$2.50 per acre.

By the terms of the bill under consideration, the price of the land has been fixed at \$6 per acre during the first three months, \$4.50 during the second three months, and then \$2.50 per acre. All lands remaining undisposed of after four years may be sold for cash under rules and regulations to be prescribed by the Secretary of Interior, at not less than \$2.50 per acre, and all lands remaining undisposed of at the expiration of seven years after the same shall be opened to settlement shall be sold without regard to the above minimum limit of price.

Section 4 of the bill, authorizes the Secretary of the Interior to reserve lands for town-site purposes, and to dispose of the same for the benefit of the Indians, and it is estimated that this will be of very much greater benefit to the Indians than if the town sites were to be disposed of under the general town-site laws.

The bill further provides that before the proclamation of the President, declaring the land open for settlement, the Indians within the reservation may relinquish allotments and select allotments in any other portion of the reservation, including the tract affected by this bill. The purpose of this is to provide an opportunity for the Indians to relinquish worthless lands that they may have selected heretofore, and take better or more desirable lands in lieu thereof.

The bill is substantially in accordance with an agreement recently negotiated with the Rosebud Indians,

which was signed by more than a majority of the male adult Indians, and it was signed by all the members of the business committee of the tribe, with the exception of one.

Dr. E. J. De Bell, who has resided upon the reservation at the agency for many years, and who has always been known to stand for what he believed was for the best interests of the Indians, in a letter under date of February 7, 1907, wrote Mr. Herbert Welsh, of the Indian Rights Association, of Philadelphia, as follows:

Rosebud Agency, S. Dak., *February 7, 1907.*

My Dear Sir: I send you herewith a copy of the McLaughlin agreement as signed by about 700 of our Indians, about 40 of a majority over the whole number of adult males of this tribe. I believe they will all sign except about 30 of the old men, who hardly ever sign any kind of a paper.

I consider the bill a good one for the Indians and the most fair one ever presented by the Government to any tribe of Indians.

When Colonel McLaughlin came here all the leading men of the tribe and their advisers got up a bill and asked for the provisions of the bill as now signed and the Indians got all they asked for, and I believe that all of the people, with very few exceptions, are satisfied.

You know me well enough to know that had I thought the Indians were not getting a square deal I would have fought the agreement as long as I had a nickel. I not only did not oppose it, but on the contrary I advised them to sign the bill.

I think it is a very excellent agreement and should be ratified by Congress. They will get all the land is worth at this time, and the matter of

getting their children allotted will be of very great importance to them.

Yours, very truly,

E. J. De Bell.

Mr. Herbert Welsh,
Secretary Indian Rights Association, Philadelphia, Pa.

The committee are of the opinion that the bill is extremely fair and liberal toward the Indians, and that it is not only satisfactory to the Indians themselves, but to the Department of Government and its officers who are charged with the duty of administering the affairs of the Indians and looking out for their best interests.

Section 6 of the bill reserves sections 16 and 36 in each township for the use of the common schools, and grants the same to the State of South Dakota, and section 7 make an appropriation to pay for the same at \$2.50 per acre. This is following the precedents which have heretofore been established in the opening of other reservations in South Dakota, and is based upon section 10 of the act of Congress admitting South Dakota into the Union, approved February 22, 1889. Said section is as follows:

Sec. 10. That upon the admission of each of said States into the Union sections numbered sixteen and thirty-six in every township of said proposed States, and where such sections, or any part thereof, have been sold or otherwise disposed of by or under the authority of any act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one-quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said States for the support of common schools, such indemnity lands to be selected within said States in such manner as the legislature may

provide, with the approval of the Secretary of the Interior: *Provided*, That the sixteenth and thirty-sixth sections embraced in permanent reservations for national purposes shall not at any time be subject to the grants not to indemnity provisions of this act, nor shall any lands embraced in Indian, military, or other reservations of any character be subject to the grants or to the indemnity provisions of this act until the reservation shall have been extinguished and such lands restored to and become a part of the public domain.

The following are the precedents:

By section 30 of the act opening and dividing the Great Sioux Reservation, sections 16 and 36 were granted to the State, and an appropriation of \$1.25 per acre was made to pay for same. Act approved March 2, 1889. (25 Stat. L., 898.)

By section 30, act approved March 3, 1891, opening the Sisseton and Wahpeton Reservation, the school sections were ceded to the State and an appropriation made, and the same were paid for at \$2.50 per acre. (26 Stat. L., 1039).

By act of August 15, 1894, opening the Yankton Reservation, the school sections were ceded to the State and paid for at \$3.75 per acre. (28 Stat. L., 313.)

Act providing for sale of Rosebud Reservation, in Gregory County, school sections were ceded and paid for at \$2.50 per acre, and act authorizing sale of a portion of the Lower Brule Reservation, first session of this (Fifty-ninth) Congress, school sections were ceded to the State and paid for at \$1.25 per acre.

For the purpose of showing that the bill has the approval of the Secretary of the Interior and the Commissioner of Indian Affairs, their letters are attached hereto, together with a copy of the agreement

negotiated by James McLaughlin, United States Indian inspector.

Department of the Interior,
Washington, February 14, 1907.

Sir: By your reference of the 28th ultimo, I am in receipt for report of copy of H. R. 24987, being a bill "to authorize the sale and disposition of a portion of the surplus or unallotted lands in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect," and in reply I inclose herewith copy of a letter from the Commissioner of Indian Affairs, dated the 14th instant, stating that the report on H. R. 24987 has been held pending the receipt of an agreement concluded by Inspector McLaughlin with the Indians of the Rosebud Reservation, which has now been received, and the Commissioner recommends that all that part of the bill after the words "A bill" be stricken out, and that the agreement, as concluded, together with a preamble and enacting clause, etc., be inserted in lieu thereof, which recommendation has the approval of the Department.

Very respectfully, E. A. Hitchcock,
Secretary.

The Chairman Committee on Indians Affairs.
House of Representatives.

Department of the Interior,
Office of Indian Affairs,
Washington, February 14, 1907.

Sir: I am in receipt by departmental reference for consideration and report of a letter from Hon. James S. Sherman, chairman of the Committee on Indian Affairs, House of Representatives, inclosing a copy of H. R. 24987, entitled "A bill to authorize the sale and disposition of a portion of the surplus or unallotted lands in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect," upon which he requests a report.

According to an informal understanding with Hon. Charles H. Burke, the author of the bill, report on the reference was deferred pending the receipt of the agreement concluded by James McLaughlin, United States Indian inspector, with the Indians of this reservation.

I am now in receipt by your reference of Inspector McLaughlin's report inclosing the agreement concluded by him.

I have considered H. R. 24987, and recommend that all that part of the bill after the words "A bill" be stricken out, and that the agreement as concluded, together with a preamble and enacting clause, with a second section providing for appropriations to carry the agreement into effect, be inserted in lieu thereof.

I have prepared a title for the ratification of the agreement, as follows:

"An act to ratify an agreement with the Indians residing on the Rosebud Indian Reservation, in the State of South Dakota, and to make appropriations for carrying the same into effect."

I inclose herewith a copy of this letter and of the bill H. R. 24987, amended as suggested, and

respectfully recommend that, should this action meet with your approval, they be transmitted to the chairman of the Committee on Indian Affairs with favorable recommendation.

Very respectfully, F. E. Leupp,
Commissioner.

The Secretary of the Interior.

AN ACT To ratify an agreement with the Indians residing on the Rosebud Indian Reservation, in the State of South Dakota, and to make appropriations for carrying the same into effect.

Whereas James McLaughlin, United States Indian inspector, did, on the twenty-first day of January, nineteen hundred and seven, conclude an agreement with the male adult Indians of the Rosebud Reservation, in the State of South Dakota, which said agreement is in words and figures as follows:

This agreement, made and entered into on the twenty-first day of January, nineteen hundred and seven, by and between James McLaughlin, United States Indian inspector on the part of the United States, and the Sioux tribe of Indians belonging on the Rosebud Reservation, in the State of South Dakota, witnesseth:

Article I. The said Indians belonging on the Rosebud Reservation, South Dakota, for the consideration herein named and in the manner hereinafter provided, do hereby cede, grant, and relinquish to the United States all claim, right, title, and interest in and to all that part of the Rosebud Indian Reservation lying south of Big White River and east of range twenty-five west, of the sixth principal meridian in South Dakota, except such portions thereof as have been, or may hereafter be,

allotted to Indians: *Provided*: That sections sixteen and thirty-six of the lands in each township shall not be disposed of, but shall be reserved for the use of the common schools of the State of South Dakota, and paid for by the United States at two dollars and fifty cents per acre.

Art. II. In consideration of the lands ceded and relinquished by Article I of this agreement, the United States stipulates and agrees to dispose of the same, as hereinafter provided, under the provisions of the homestead and town-site laws, or by sale for cash, and shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the manner in which the lands may be settled upon, occupied, and entered by persons entitled to make entry thereof, and no person shall be permitted to settle upon, occupy, or enter upon any of said lands, except as prescribed in such proclamation: *Provided*, That prior to said proclamation the Secretary of the Interior, in his discretion, may permit Indians who have an allotment within the Rosebud Reservation to relinquish such allotment and to receive in lieu thereof an allotment anywhere within said reservation, and he shall also allot one hundred and sixty (160) acres of land to each child of Indian parentage, whose father or mother is or was, in case of death, a duly enrolled member of the Sioux tribe of Indians belonging on the Rosebud Reservation, who is living at the date of the approval of the act ratifying this agreement and who has not heretofore received an allotment, and such allotments shall be made prior to the lands being opened to settlement and entry, upon any unallotted land within said reservation, including the tract ceded by Article I of this agreement: *And provided further*, That allotments shall be made to children of the Indians, parties hereto, who have not pre-

viously received an allotment, so long as the said Indians are possessed of any unallotted reservation lands.

Art. III. It is agreed that the price of said lands entered as homesteads shall be as follows: Upon all land entered or filed upon within three months after the same shall be opened to settlement and entry, six dollars per acre, and upon all land entered or filed upon after the expiration of three months and within six months after the same shall have been opened to settlement and entry, four dollars and fifty cents per acre. After the expiration of six months and within four years after the same shall have been opened to settlement and entry, the price shall be two dollars and fifty cents per acre. That the price shall be paid in accordance with rules and regulations to be prescribed by the Secretary of the Interior upon the following terms: One-fifth of the purchase price to be paid in cash at the time of entry, and the balance in five annual installments, to be paid in one, two, three, four, and five years, respectively, from and after the date of entry. That in case any entryman fails to make the annual payments, or any of them, promptly when due, all rights in and to the land covered by his or her entry shall cease, and any payments theretofore made shall be forfeited and the entry canceled, and the lands shall be reoffered for sale and entry under the provisions of the homestead law in the same price that it was first entered. That the lands disposed of under the town-site law shall be paid for at the price provided by law. That all lands remaining undisposed of at the expiration of four years from the opening of the said lands to entry may be, in the discretion of the Secretary of Interior, sold to the highest bidder for cash, without regard to the above minimum limit of price.

Art. IV. It is further agreed that of the amount to be derived from the sale of said lands, as stipulated in Article III of this agreement, the sum of one million dollars (\$1,000,000) shall, from the first moneys received from the sale of these lands, be devoted to the creation of a fund of one million dollars, which shall be deposited in the United States Treasury to the credit of the Indians, parties hereto, and which shall draw five per cent interest for a period of ten years from the date of such deposit, which interest shall be paid to the beneficiaries per capita in cash annually. That at the expiration of ten years after said fund of one million dollars shall have been deposited in the United States Treasury to the credit of the Rosebud Indians, said fund shall be equally distributed among the beneficiaries, parties hereto:, *Provided*, That the proceeds derived from the sale of said lands, after the one million dollars of the ten years' interest-bearing fund herein provided for has been created, shall be expended for the benefit of the Rosebud Indians, in the discretion of the Secretary of the Interior, upon an application by a majority petition of the Indians, parties hereto, through and upon the recommendation of the Indian agent in charge of the Rosebud Indian Reservation.

Art. V. It is further agreed that sections sixteen and thirty-six of the lands in each township of the lands hereby relinquished shall not be subject to entry, but shall be reserved for the use of the common schools of the State of South Dakota, and paid for by the United States at two dollars and fifty cents per acre and in case any of the said sections, or parts thereof, of the land in the tract hereby relinquished are lost to the State of South Dakota by reason of allotment thereof to Indians or otherwise the governor of said State, with the approval of the Secretary of the Interior, may

locate other lands of similar character and equal value not occupied, and not exceeding two sections in any one township, which shall be paid for by the United States as herein provided in quantity equal to the loss, and such selections shall be made prior to the opening of such lands to settlement.

Art. VI. It is the understanding that nothing in this agreement contained shall in any manner bind the United States to purchase any portion of the land herein described, except sections sixteen and thirty-six, or the equivalent, in each township, or to dispose of said land except as provided herein, or to guarantee to find purchasers for said lands or any portion thereof, it being understood that the United States shall act as trustee for said Indians to dispose of said lands and to expend for said Indians and pay over to them the proceeds received from the sale thereof only as received, as herein provided.

Art. VII. It is understood that nothing in this agreement shall be construed to deprive the said Indians of the Rosebud Reservation, South Dakota, of any benefits to which they are entitled under existing treaties or agreements not inconsistent with the provisions of this agreement.

In witness whereof the said James McLaughlin, U.S. Indian inspector, on the part of the United States, and the male adult Indians belonging on the Rosebud Reservation, South Dakota, have hereunto set their hands and seals at the Rosebud Agency, South Dakota, this twenty-first day of January, A. D. nineteen hundred and seven.

James McLaughlin, [Seal.]
U.S. Indian Inspector.

No.	Name.	Age.	Mark.	Seal and thumb imprint.
1	Hollow Horn Bear . . .	55	Seal (x).
(And 704 others.)				

We, the undersigned, hereby certify that the foregoing agreement was fully explained by us in open council to the Indians of the Rosebud Reservation, South Dakota; that it was fully understood by them before signing, and that the foregoing signatures, though names are similar in some cases, represent different individuals in each instance, as indicated by their respective ages.

Louis Bordeaux,
Louis Roubideau,
Interpreters.

Rosebud Agency, South Dakota, *February 5, 1907.*

We, the undersigned, do hereby certify that we witnessed the signatures of James McLaughlin, United States Indian inspector, and of the 705 Indians of the Rosebud Reservation to the foregoing agreement.

Wm. F. Schmidt,
Issue Clerk.

C. H. Bennett,
Farmer, Cut Meat District.

Ernest Falconer,
Farmer, Black Pipe District.

Frank Robinson,
Farmer, Little White River District.

O. E. Steinbaugh,
Farmer, Butte Creek District.

Teen Fenenga,
Farmer, Big White River District.

Kranth H. Cressman,
Teacher in Charge, Ponca District.
 Louis Bordeaux,
Ex-Farmer, Agency District

Rosebud Agency, South Dakota, *February 5, 1907.*

Indians over 18 years of age

belonging on the
 Rosebud Reservation, South Dakota, is 1,368, of
 whom 705 have signed the foregoing agreement.

Edward B. Kelley,
U.S. Indian Agent.

Rosebud Agency, South Dakota, *February 5, 1907.*

Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the said agreement be, and the same is hereby, accepted, ratified, and confirmed.

Sec. 2. For the purpose of carrying this agreement into effect there is hereby appropriated and set aside in the Treasury of the United States, for payment to said Indians for lands granted to the State of South Dakota, the sum of one hundred and seventy-six thousand dollars, or so much thereof as may be necessary, which shall draw interest as provided in Article V of the agreement. And there is hereby appropriated the further sum of fifteen thousand dollars, or so much thereof as may be necessary, for the purpose of making the allotments provided for herein.

[#22C]

(Senate report to accompany H. R. 24987)

[S. Rep. No. 6838, 59th Cong. 2d Sess. 1-7 (1907)]

SALE AND DISPOSITION OF CERTAIN LANDS
 IN THE ROSEBUD INDIAN RESERVATION
 IN SOUTH DAKOTA.

February 19, 1907.—Ordered to be printed.

Mr. GAMBLE, from the Committee on Indian Affairs,
 submitted the following

REPORT.

[To accompany H. R. 24987.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 24987), to authorize the sale of a portion of the surplus or unallotted lands in the Rosebud Indian Reservation in the State of South Dakota, and making appropriation and provision to carry the same into effect, having had the same under consideration, submit the following report and recommend that the bill do pass with the following amendments:

On page 5, in line 14, strike out the word "three" and insert in lieu thereof the word "five."

On page 6, in line 24, after the word "act" add the following:

And there is hereby appropriated the further sum of fifteen thousand dollars, or so much

thereof as may be necessary, for the purpose of making the allotments provided for herein.

Your committee submits the report of the House Committee on Indian Affairs accompanying said bill, and makes it a part of this report.

The House report is as follows:

The purpose of this bill is to authorize the opening and sale of that portion of the Rosebud Reservation in South Dakota known as Tripp County, and it affects all that portion of the reservation east of range 25 of the fifth principal meridian south of the Big White River, and embraces about 1,000,000 acres.

In the second session of the Fifty-eighth Congress a law was passed authorizing a sale of so much of this same reservation as was located in Gregory County, the tract affected being about one-half the area embraced in the tract affected by the pending bill and lying immediately adjoining and east of Tripp County.

The sale and disposition of the lands in Gregory County have proven very satisfactory, and the lands have been disposed of at the prices provided in the law, except such portions involving about 100,000 acres which are rough and undesirable, being bluffs along the Missouri River.

The opponents to the passage of the aforesaid law based their claims largely upon the assumption that by the terms that were proposed by this law the Indians would not receive as much as they would have received by the terms of an agreement which they made for the cession and sale of that portion of their reservation, namely \$1,000,000. The opening did not take place until August, 1904, and yet up to February 2, 1907, there had been paid into the Treasury and credited to the Indians by reason of this sale the sum of

\$925,976.38, as will be shown by the foregoing letter from the Secretary of the Treasury:

Treasury Department,
Office of the Secretary,
Washington, February 2, 1907.

Sir: In reply to your request of the 2d instant to be informed as to the amount of money which has been received and credited to Rosebud Indians of South Dakota by reason of the sale of a portion of the Rosebud Reservation in Gregory County, S. Dak., disposed of under the act of Congress of April 23, 1904, I have the honor to advise you that the receipts on this account covered into the Treasury under the act in question amount to \$852,117.63, and that by the same act the school sections of the Rosebud Reservation granted to the State, and for which the fund of the Indians was to receive payment, have increased said fund in the sum of \$73,858.75, so that the fund of "Proceeds of Rosebud Reservation, S. Dak.," under the said act has amounted to date to \$925,976.38.

Respectfully,

L. M. Shaw,
Secretary.

Hon. Charles H. Burke,
House of Representatives.

From a careful estimate of the amount that will be received from those who have entered the land and have not yet paid therefor in full, there will be about \$700,000 more paid into the Treasury, and besides there are 100,000 acres to be disposed of that ought to sell for not less than \$200,000, so that as the result of the law passed as before stated, the Indians will receive in the end nearly double what they would have gotten had their agreement been ratified. The price of the land in that law is \$4 per acre during the first three months,

\$3 during the second three months, and then \$2.50 per acre.

By the terms of the bill under consideration the price of the land has been fixed at \$6 per acre during the first three months, \$4.50 during the second three months, and then \$2.50 per acre. All lands remaining undisposed of after four years may be sold for cash under rules and regulations to be prescribed by the Secretary of the Interior at not less than \$2.50 per acre, and all lands remaining undisposed of at the expiration of seven years after the same shall be opened to settlement shall be sold without regard to the above minimum limit of price.

Section 4 of the bill authorizes the Secretary of the Interior to reserve lands for town-site purposes, and to dispose of the same for the benefit of the Indians, and it is estimated that this will be of very much greater benefit to the Indians than if the town sites were to be disposed of under the general town-site laws.

The bill further provides that before the proclamation of the President, declaring the land open for settlement, the Indians within the reservation may relinquish allotments and select allotments in any other portion of the reservation, including the tract affected by this bill. The purpose of this is to provide an opportunity for the Indians to relinquish worthless lands that they may have selected heretofore, and take better or more desirable lands in lieu thereof.

The bill is substantially in accordance with an agreement recently negotiated with the Rosebud Indians, which was signed by more than a majority of the male adult Indians, and it was signed by all the members of the business committee of the tribe, with the exception of one.

Dr. E. J. De Bell, who has resided upon the reservation at the agency for many years, and who has always been known to stand for what he believed was for the best interests of the Indians, in a letter under date of February 7, 1907, wrote Mr. Herbert Welsh, of the Indian Rights Association, of Philadelphia, as follows:

Rosebud Agency, S. Dak., *February 7, 1907.*

My Dear Sir: I send you herewith a copy of the McLaughlin agreement as signed by about 700 of our Indians, about 40 of a majority over the whole number of adult males of this tribe. I believe they will all sign except about 30 of the old men, who hardly ever sign any kind of a paper.

I consider the bill a good one for the Indians and the most fair one ever presented by the Government to any tribe of Indians.

When Colonel McLaughlin came here all the leading men of the tribe and their advisers got up a bill and asked for the provisions of the bill as now signed and the Indians got all they asked for, and I believe that all of the people, with very few exceptions, are satisfied.

You know me well enough to know that had I thought the Indians were not getting a square deal I would have fought the agreement as long as I had a nickel. I not only did not oppose it, but on the contrary I advised them to sign the bill.

I think it is a very excellent agreement and should be ratified by Congress. They will get all the land is worth at this time, and the matter of getting their children allotted will be of very great importance to them.

Yours, very truly,

E. J. De Bell.

Mr. Herbert Welsh,
Secretary, Indian Rights Association, Philadelphia, Pa.

The committee are of the opinion that the bill is extremely fair and liberal toward the Indians, and that it is not only satisfactory to the Indians themselves, but to the Department of the Government and its officers who are charged with the duty of administering the affairs of the Indians and looking out for their best interests.

Section 6 of the bill reserves sections 16 and 36 in each township for the use of the common schools, and grants the same to the State of South Dakota, and section 7 makes an appropriation to pay for the same at \$2.50 per acre. This is following the precedents which have heretofore been established in the opening of other reservations in South Dakota, and is based upon section 10 of the act of Congress admitting South Dakota into the Union, approved February 22, 1889. Said section is as follows:

"Sec. 10, That upon the admission of each of said States into the Union sections numbered sixteen and thirty-six in every township of said proposed States, and where such sections, or any part thereof, have been sold or otherwise disposed of by or under the authority of any act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one-quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said States for the support of common schools, such indemnity lands to be selected within said States in such manner as the legislature may provide, with the approval of the Secretary of the Interior: *Provided*, That the sixteenth and thirty-sixth sections embraced in permanent reservations for national purposes shall not at any time be

subject to the grants nor to indemnity provisions of this act, nor shall any lands embraced in Indian, military, or other reservations of any character be subject to the grants or to the indemnity provisions of this act until the reservation shall have been extinguished and such lands restored to and become a part of the public domaine.

The following are the precedents:

By section 30 of the act opening and dividing the Great Sioux Reservation, sections 16 and 36 were granted to the State, and an appropriation of \$1.25 per acre was made to pay for same. Act approved March 2, 1889. (25 Stat. L., 898.)

By section 30, act approved March 3, 1891, opening the Sisseton and Wahpeton Reservation, the school sections were ceded to the State and an appropriation made, and the same were paid for at \$2.50 per acre. (26 Stat. L., 1039.)

By act of August 15, 1894, opening the Yankton Reservation, the school sections were ceded to the State and paid for at \$3.75 per acre. (28 Stat. L., 313.)

Act providing for sale of Rosebud Reservation, in Gregory County, school sections were ceded and paid for at \$2.50 per acre, and act authorizing sale of a portion of the Lower Brulé Reservation, first session of this (Fifty-ninth) Congress, school sections were ceded to the State and paid for at \$1.25 per acre.

For the purpose of showing that the bill has the approval of the Secretary of the Interior and the Commissioner of Indian Affairs, their letters are attached hereto, together with a copy of the agreement negotiated by James McLaughlin, United States Indian Inspector.

Department of the Interior.
Washington, February 14, 1907.

Sir: By your reference of the 28th ultimo, I am in receipt for report of copy of H.R. 24987, being a bill "to authorize the sale and disposition of a portion of the surplus or unallotted lands in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect," and in reply I inclose herewith copy of a letter from the Commissioner of Indian Affairs, dated the 14th instant, stating that the report on H.R. 24987 has been pending the receipt of an agreement concluded by Inspector McLaughlin with the Indians of the Rosebud Reservation, which has now been received, and the Commissioner recommends that all that part of the bill after the words "A bill" be stricken out, and that the agreement, as concluded, together with a preamble and enacting clause, etc., be inserted in lieu thereof, which recommendation has the approval of the Department.

Very respectfully,

E.A. Hitchcock,
Secretary.

The Chairman Committee on Indian Affairs,
House of Representatives.

Department of the Interior.
 Office of Indian Affairs,
Washington, February 14, 1907.

Sir: I am in receipt by departmental reference for consideration and report of a letter from Hon. James S. Sherman, chairman of the Committee on Indian Affairs, House of Representatives, inclosing

a copy of H.R. 24987, entitled "A bill to authorize the sale and disposition of a portion of the surplus or unallotted lands in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect," upon which he requests a report.

According to an informal understanding with Hon. Charles H. Burke, the author of the bill, report on the reference was deferred pending the receipt of the agreement concluded by James McLaughlin, United States Indian inspector, with the Indians of this reservation.

I am now in receipt by your reference of Inspector McLaughlin's report inclosing the agreement concluded by him.

I have considered H.R. 24987, and recommend that all that part of the bill after the words "A bill" be stricken out, and that the agreement as concluded, together with a preamble and enacting clause, with a second section providing for appropriations to carry the agreement into effect, be inserted in lieu thereof.

I have prepared a title for the ratification of the agreement, as follows:

"An act to ratify an agreement with the Indians residing on the Rosebud Indian Reservation, in the State of South Dakota, and to make appropriations for carrying the same into effect."

I inclose herewith a copy of this letter and of the bill H.R. 24987, amended as suggested, and respectfully recommend that, should this section meet with your approval, they be transmitted to the chairman of the Committee on Indian affairs with favorable recommendation.

Very respectfully,

F.E. Leupp,
Commissioner.

The Secretary of the Interior.

AN ACT To ratify an agreement with the Indians residing on the Rosebud Indian Reservation, in the State of South Dakota, and to make appropriations for carrying the same into effect.

Whereas James McLaughlin, United States Indian inspector, did, on the twenty-first day of January, nineteen hundred and seven, conclude an agreement with the male adult Indians of the Rosebud Reservation, in the State of South Dakota, which said agreement is in words and figures as follows:

This agreement made and entered into on the twenty-first day of January, nineteen hundred and seven, by and between James McLaughlin, United States Indian inspector on the part of the United States, and the Sioux tribe of Indians belonging on the Rosebud Reservation, in the State of South Dakota, witnesseth:

Article I. the said Indians belonging on the Rosebud Reservation, South Dakota, for the consideration herein named and in the manner hereinafter provided, do hereby cede, grant, and relinquish to the United States all claim, right, title, and interest in and to all that part of the Rosebud Indian Reservation lying south of Big White River and east of range twenty-five west, of the sixth principal meridian in South Dakota, except such portions thereof as have been, or may hereafter be, allotted to the Indians: *Provided*, That sections sixteen and thirty-six of the lands in each township shall not be disposed of, but shall be reserved for the use of the common schools of the State of South Dakota, and paid for by the United States at two dollars and fifty cents per acre.

Art. II. In consideration of the lands ceded and relinquished by Article I of this agreement, the United States stipulates and agrees to dispose of the same, as hereinafter provided, under the

provisions of the homestead and town-site laws, or by sale for cash, and shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the manner in which the lands may be settled upon, occupied, and entered by persons entitled to make entry thereof, and no person shall be permitted to settle upon, occupy, or enter upon any of said lands, except as prescribed in such proclamation: *Provided*, That prior to said proclamation the Secretary of the Interior, in his discretion, may permit Indians who have an allotment within the Rosebud Reservation to relinquish such allotment and to receive in lieu thereof an allotment anywhere within said reservation, and he shall also allot one hundred and sixty (160) acres of land to each child of Indian parentage, whose father or mother is or was, in case of death, a duly enrolled member of the Sioux tribe of Indians belonging on the Rosebud Reservation, who is living at the date of the approval of the act ratifying this agreement and who has not heretofore received an allotment and such allotments shall be made prior to the lands being opened to settlement and entry, upon any unallotted land within said reservation, including the tract ceded by Article I of this agreement: *And provided further*, That allotments shall be made to children of the Indians, parties hereto, who have not previously received an allotment, so long as the said Indians are possessed of any unallotted reservation lands.

Art. III. It is agreed that the price of said lands entered as homesteads shall be as follows: Upon all land entered or filed upon within three months after the same shall be opened to settlement and entry, six dollars per acre, and upon all land entered or filed upon after the expiration of three months and within six months after the same shall

have been opened to settlement and entry, four dollars and fifty cents per acre. After the expiration of six months and within four years after the same shall have been opened to settlement and entry, four dollars and fifty cents per acre. After the expiration of six months and within four years after the same shall have been opened to settlement and entry, the price shall be two dollars and fifty cents per acre. That the price shall be paid in accordance with rules and regulations to be prescribed by the Secretary of the Interior upon the following terms: One-fifth of the purchase price to be paid in one, two, three, four, and five years, respectively, from and after the date of entry. That in case any entryman fails to make the annual payments, or any of them, promptly when due, all rights in and to the land covered by his or her entry shall cease, and any payments theretofore made shall be forfeited and the entry canceled, and the lands shall be reoffered for sale and entry under the provisions of the homestead law at the same price that it was first entered. That the lands disposed of under the town-site law shall be paid for at the price provided by law. That all lands remaining undisposed of at the expiration of four years from the opening of the said lands to entry may be, in the discretion of the Secretary of the Interior, sold to the highest bidder for cash, without regard to the above minimum limit of price.

Art. IV. It is further agreed that of the amount to be derived from the sale of said lands, as stipulated in Article III of this agreement, the sum of one million dollars (\$1,000,000) shall, from the first moneys received from the sale of these lands, be devoted to the creation of a fund of one million dollars, which shall be deposited in the United States Treasury to the credit of the

Indians, parties hereto, and which shall draw five per cent interest for a period of ten years from the date of such deposit, which interest shall be paid to the beneficiaries per capita in cash annually. That at the expiration of ten years after said fund of one million dollars shall have been deposited in the United States Treasury to the credit of the Rosebud Indians, said fund shall be equally distributed among the beneficiaries, parties hereto: *Provided*, That the proceeds derived from the sale of said lands, after the one million dollars of the ten years' interest-bearing fund and herein provided for has been created, shall be expended for the benefit of the Rosebud Indians, in the discretion of the Secretary of the Interior, upon an application by a majority petition of the Indians, parties hereto, through and upon the recommendation of the Indian agent in charge of the Rosebud Indian Reservation.

Art. V. It is further agreed that sections sixteen and thirty-six of the lands in each township of the lands hereby relinquished shall not be subject to entry, but shall be reserved for the use of the common schools of the State of South Dakota, and paid for by the United States at two dollars and fifty cents per acre, and in case any of the said sections, or parts thereof, of the land in the tract hereby relinquished are lost to the State of South Dakota by reason of allotment thereof to Indians or otherwise, the governor of said State, with the approval of the Secretary of the Interior, may locate other lands of similar character and equal value not occupied, and not exceeding two sections in any one township, which shall be paid for by the United States as herein provided in quantity equal to the loss, and such selections shall be made prior to the opening of such lands to settlement.

Art. VI. It is the understanding that nothing in this agreement contained shall in any manner bind the United States to purchase any portion of the land herein described, except sections sixteen and thirty-six, or the equivalent, in each township, or to dispose of said land except as provided herein, or to guarantee to find purchasers for said lands or any portion thereof, it being understood that the United States shall act as trustee for said Indians to dispose of said lands and to expend for said Indians and pay over to them the proceeds received from the sale thereof only as received, as herein provided.

Art. VII. It is understood that nothing in this agreement shall be construed to deprive the said Indians of the Rosebud Reservation, South Dakota, of any benefits to which they are entitled under existing treaties or agreements not inconsistent with the provisions of this agreement.

In witness whereof the said James McLaughlin, U.S. Indian inspector, on the part of the United States, and the male adult Indians belonging on the Rosebud Reservation, South Dakota, have hereunto set their hands and seals at the Rosebud Agency, South Dakota, this twenty-first day of January, A.D. nineteen hundred and seven.

James McLaughlin, [seal.]
U.S. Indian Inspector.

No.	Name.	Age.	Mark.	Seal and thumb im- print.
1	Hollow Horn Bear . . .	55	Seal (x).
(And 704 others.)				

We, the undersigned, hereby certify that the foregoing agreement was fully explained by us in open council to the Indians of the Rosebud Reservation, South Dakota; that it was fully

understood by them before signing, and that the foregoing signatures, though names are similar in some cases, represent different individuals in each instance, as indicated by their respective ages.

Louis Bordeaux
Louis Roubideau,
Interpreters.

Rosebud Agency, South Dakota, *February 5, 1907.*

We, the undersigned, do hereby certify that we witnessed the signatures of James McLaughlin, United States Indian inspector, and of the 705 Indians of the Rosebud Reservation to the foregoing agreement.

Wm. F. Schmidt,
Issue Clerk.

C.H. Bennett,
Farmer, Cut Meat District.

Ernest Falconer,
Farmer, Black Pipe District.

Frank Robinson,
Farmer, Little White River District.

O.E. Steinbaugh,
Farmer, Butte Creek District.

Teen Fenenga,
Farmer, Big White River District.

Kranth H. Cressman,
Teacher in Charge, Ponca District.

Louis Bordeaux,
Ex-Farmer, Agency District.

Rosebud Agency, South Dakota, *February 5, 1907.*

I certify that the total number of male adult Indians over 18 years of age belonging on the Rosebud Reservation, South Dakota, is 1,368, of whom 705 have signed the foregoing agreement.

Edward B. Kelley,
U.S. Indian Agent.

Rosebud Agency, South Dakota, February 5,
1907.

Therefore.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the said agreement be, and the same is hereby, accepted, ratified, and confirmed:

Sec. 2. For the purpose of carrying this agreement into effect there is hereby appropriated and set aside in the Treasury of the United States, for payment to said Indians for lands granted to the State of South Dakota, the sum of one hundred and seventy-six thousand dollars, or so much thereof as may be necessary, which shall draw interest as provided in Article V of the agreement. And there is hereby appropriated the further sum of fifteen thousand dollars, or so much thereof as may be necessary, for the purpose of making the allotments provided for herein.

[#22D]

(House of Representatives Conference Report
to accompany H.R. 24987)

[H.R. Rep. No. 8109, 59th Cong. 2d Sess. 1-2 (1907)]

DISPOSITION OF UNALLOTTED LANDS IN THE ROSEBUD RESERVATION, S. DAK.

February 26, 1907.—Ordered to be printed.

Mr. Sherman, from the committee of conference,
submitted the following

CONFERENCE REPORT.

[To accompany H.R. 24987.]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 24987) to authorize the sale and disposition of a portion of the surplus or unallotted lands in the Rosebud Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect, having met, in full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendment No. 1.

That the House recede from its disagreement to the amendment of the Senate No. 2, and agree to the same with an amendment, adding the following proviso:

Provided, That the same shall be reimbursed to the United States from the proceeds received from the sale of the lands described herein or from any money in the Treasury belonging to said Rosebud Indians.

And the Senate agree to the same.

J.S. Sherman,
Chas. H. Burke,
John H. Stephens.

Managers on the part of the House.

Robert J. Gamble,
Frank B. Brandegee,
Fred T. Dubois,

Managers on the part of the Senate.

STATEMENT OF THE MANAGERS ON THE PART OF THE HOUSE.

The result of the conference is that the Senate recedes from its amendment No. 1.

The bill provides that from the proceeds derived from the sale of the land there shall be a million dollar fund deposited in the Treasury and interest shall be paid thereon for ten years. The bill of the House named the rate of interest at 3 per cent; the amendment of the Senate changed the rate from 3 to 5.

The House recedes from its disagreement to amendment No. 2 with an amendment. This amendment of the Senate provides an appropriation of \$15,000, or so much thereof as may be necessary, for the purpose of making the allotments provided by the bill. The amendment is a proviso that the same shall be reimbursed to the United States from the proceeds received from the sale of the lands described in the bill or from any money in the Treasury belonging to said Rosebud Indians.

J.S. Sherman,
Chas. H. Burke,
John H. Stephens,

Managers on the part of the House.

[#23]

(Letters of Dec. 5, 1906 to the Secretary of the Interior and J. McLaughlin from Commissioner of Indian Affairs F. E. Leupp.)

Land. 103406, 1906.

DEPARTMENT OF THE INTERIOR OFFICE OF INDIAN AFFAIRS WASHINGTON

December 5, 1906

The Honorable,
The Secretary of the Interior.

Sir:

I have the honor to acknowledge the receipt of a letter of November 26, from the First Assistant Secretary of the Interior, referring to Office communications of June 4 and November 23, 1906, concerning the recommendation of Senator Gamble that an inspector be detailed to enter into negotiations with the Rosebud Indians for the cession of their surplus unallotted lands in Tripp County, South Dakota, and saying that Inspector McLaughlin is now at liberty to take up this work.

He therefore requests that a letter of instructions for the inspector named be prepared and submitted to the Department as early as practicable, and says that he will be detailed at once for this duty.

In accordance with his request, I have caused to be prepared and transmit herewith for your consideration

and approval a draft of instructions for the guidance of the inspector in conducting the proposed negotiations.

Very respectfully,

/s/F. E. Leupp
F. E. Leupp
Commissioner.

JHH-McC.

Land. 03406, 1906.

DEPARTMENT OF THE INTERIOR
OFFICE OF INDIAN AFFAIRS
WASHINGTON

December 5, 1906

James McLaughlin, Esq.,
United States Indian Inspector,

Sir:

The Office is in receipt of a letter of November 26, 1906, from the First Assistant Secretary of the Interior, referring to Office communications of June 4 and November 23, 1906, concerning the recommendation of Senator Gamble that an inspector be detailed to enter into negotiations with the Rosebud Indians for the cession of the surplus unallotted land in Tripp County, South Dakota, and say that you are now at liberty to take up this work.

He therefore requests the Office to prepare and submit to the Department, as early as practicable, a letter of instructions for your guidance in conducting

the proposed negotiations, saying that you will be at once detailed for this duty.

The lands referred to are embraced in townships 95 to 100 north, both inclusive, ranges 74 to 78 west, both inclusive; fractional townships 95 to 100 north, range 79 west; township 101 north, ranges 74 to 78 west, both inclusive; township 102 north, ranges 74, 75, 77, and 78 west; fractional townships 101 and 102 north, range 79 west; township 102 north, range 76 west, south of White River; township 103 north, ranges 74 to 78 west, both inclusive, south of White River; fractional township 103 north, range 79 west, south of White River; township 104 north, range 74 west, south of White River, all of the Fifth Principal Meridian.

That part of townships 101 and 102 north, range 73 west, and townships 103 and 104 north, range 73 west, said meridian, south of White River in said reservation, which is in Lyman County, should also be considered in connection with the foregoing description of lands. The strip of land described lies east of the north part of Tripp County, as laid down on the map of the General Land Office issued in 1901, copy of which is enclosed for convenient reference. The Annual Report of this Office for 1905 shows the unallotted lands of the reservation to be 1,616,407 acres. The lands above described embrace according to approximate estimate 1,094,000 acres, of which there has been allotted about 187,000 acres, leaving a surplus of some 907,000 acres.

You are familiar with the situation there and for this reason it is not deemed necessary to give instructions in detail for conducting the negotiations. If, however, any agreement is concluded with the Indians, the Department feels that the disposal to be made of the proceeds arising from the cession is a subject requiring most careful and earnest consideration on your part. From

ample experience, it is convinced that annuities and the issuance of rations for any extended period of years to Indians are very detrimental to their welfare. Idleness and lack of selfdependence are fostered by the ration and annuity system, and it is believed that it is one of the great drawbacks to the progress of the Indian tribes toward civilization. Any provision, therefore, in the agreement with the Rosebuds which would enable them to live without putting forth at least as great efforts as at present to gain a livelihood would be regarded necessarily as a step backward.

Their special needs should therefore be inquired into. Their agent should be consulted also. A plan for the disposal of the proceeds should be formulated that will tend to promote the welfare of the Indians and start them on the road to civilization and self-support. If stock cattle are needed, provision should be made for their purchase with a part of the funds to be derived from the cession. The question of irrigation also should receive consideration; and if irrigation of the diminished reservation or allotted lands is found to be practicable, provision therefore should be made.

The educational needs of the Indians should receive attention, and if any additional facilities are required these should be provided for. The question of the construction of houses and the purchase of additional farm implements, wagons, harness, etc., should be looked into and if these are needed provision therefore should be made. But the agreement should not provide for the payment of any large sum or sums to the Indians in cash, if it be possible to obtain their consent without it.

The Office is in receipt of a communication of November 22 from Hon. Charles H. Burke, wherein he says that he recently visited the Rosebud Reservation

for the purpose of gaining information with a view to preparing a bill for the sale of that part of the reservation located in Tripp County; that he found that a large number of Indians had taken allotments in the western and southwestern parts of the reserve, on lands which are now, and always will be, worthless, being nothing but sandhills; that the Indians who have allotments in the reservation elsewhere than in Tripp County should be permitted, in the discretion of the Secretary of the Interior, to relinquish them and to take allotments in lieu thereof in some other part of the reservation, including Tripp County; and that on consultation with the Indians he learned that they believed that children now living or born since the allotments were made on the reservation should each be given allotments of 160 acres of land. It is suggested that you give these two matters consideration in connection with the proposed negotiations.

The land ceded should be disposed of under the general provisions of the homestead and townsite laws of the United States. The price of the said land entered as homesteads should receive careful consideration. The following would seem to be fair terms, similar to those in the disposal of the ceded lands in Gregory County, S.D.:

On all lands entered or filed upon within three months after they shall have been opened for settlement and entry, five dollars per acre, and on all lands entered or filed upon after the expiration of three months and within six months after they shall have been opened for settlement and entry, four dollars per acre; after the expiration of six months from the time when they shall have been opened for settlement and entry the price should be two dollars and fifty cents per acre. The lands should be paid for in accordance

with rules and regulations to be prescribed by the Secretary on these terms: one-fifth of the purchase price to be paid in cash at the time of entry, and the balance in five equal annual installments to be paid in one, two, three, four, and five years, respectively, from and after the date of entry. All lands remaining undisposed of at the expiration of four years from the date of opening them to entry should be sold to the highest bidder for cash, at not less than two dollars and fifty cents per acre, under rules and regulations to be prescribed by the Secretary, and any lands remaining unsold for seven years after they shall have been opened to entry should be sold to the highest bidder for cash, without regard to said minimum limit of price.

It is suggested that the agreement provide that the Indians shall have the benefit of whatever can be realized from the sale of lands for townsite purposes, and should authorize the Secretary of the Interior to reserve from the ceded lands such tracts for these purposes as in his opinion may be required for the future public interests, and to cause them to be surveyed into lots and blocks and disposed of under such regulations as he may prescribe, in accordance with Section 2381 of the Revised Statutes, the net proceeds derived from the sale of such lands to be credited to the Indians as agreed upon.

It is thought that it should contain an article providing that the unallotted and unreserved lands, if any, in sections 16 and 36 in the cession should be reserved for the use of the common schools of the said State, and paid for by the United States at the rate of two dollars and fifty cents per acre.

As above indicated, the proposal for the cession of the surplus lands in question did not come from the Indian themselves. No undue pressure should be

brought to bear upon them to enter into an agreement. If after assembling them in council and fully explaining to them the purpose thereof, they should refuse to cede the lands referred to, you should report that fact to the Department. If, however, an agreement is concluded, it should be executed in proper form for acceptance and ratification by Congress, and should contain a provision to the effect that it must be so ratified in order to make it valid.

In this connection attention is invited to Article 12 of the Sioux treaty of April 29, 1868 (15 Stat. L., 635), which provides that no treaty for the cession of lands with said Indians shall be valid unless executed and signed by at least three-fourths of all the adult male Indians occupying or interested therein. Should the signatures of three-fourths of the adult male Indians be procured, a certificate by the United States Indian Agent should be attached, giving the total number of Indians of the reservation entitled to sign, and showing that those who have signed constitute at least three-fourths of the said Indians. Their signature should be followed by their respective thumb prints.

I am informally advised that the Indians who have discussed with outsiders the project for opening Tripp County have indicated their intention of opposing it unless they can force the Government into reversing its rule under which the money of the minor children is returned to the United States Treasury to await the coming of age of the beneficiaries. If any such argument is raised in the councils you hold with the Indians, I wish that you would meet it by explaining that the Department has acted in this matter with the Indians only as the courts all over the United States act with white people in practically parallel situations. The money in questions belongs to the children and not to

their parents, and the courts everywhere inquire into the capacity of the parents, their moral characters, etc., before even allowing them to become bonded guardians and take the custody of their children's money. A parent who is ignorant, frivolous, unindustrious, imprudent in matters affecting property, intemperate, otherwise vicious, or even weak, is not permitted to handle freely the money of his children. It would be impracticable obviously for the average Indian of the Rosebud Reservation to obtain a satisfactory bond if he were to apply for the legal guardianship of his child with the right to take charge of the child's money. Moreover, any Indian appointed guardian would be put upon the same footing as any white bonded guardian in respect to being required from time to time to furnish the court with an accounting showing where every dollar of the child's money had gone, and with liability to punishment, if it had been recklessly wasted, and here again the uneducated Indian would probably fall short.

The Department has, however, been a little more considerate of those Indians who are worthy of consideration than the courts would have been. I have caused to be prepared, from the best information obtainable from trustworthy sources, a list of the Indians of the Rosebud Reservation who are temperate, prudent, honest and otherwise fitted to take charge of and spend judiciously the money of their children for these children's own benefit. This list I have denominated a Roll of Honor, and to the persons whose names are on it the Agent has been instructed to pay the Gregory County land money of their children. The formation of the Roll of Honor has been explained to the Indians, and all have been given to understand that Indians not on the Roll who are ambitious to be included in it, can have such ambition gratified only by

fitting themselves for inclusion on the same lines on which those now on the Roll have approved themselves as worthy to be there; and also that any Indian now on the Roll is liable to have his name expunged from it by departing from the path of rectitude as marked out by the Department. I trust that you will emphasize these points particularly in any discussion of this phase of the matter which may come up in council, so as to impress more than ever upon the Indians that the purpose underlying the retention of the minors' money is purely benevolent, and adopted in the interest of justice to the children who have a right to demand such treatment from the Department as trustee of their welfare.

It is but right to the Indians also that you should explain to them with great particularity that the law as defined by the Supreme Court of the United States, our highest and final tribunal, vests in Congress the right to open their lands without their consent; that the desire of the Department in sending you to talk the matter over with the Indians is to obtain from them their views of the terms on which the opening ought to be made; and that it will doubtless be to their advantage to enter into an agreement containing such reasonable provisions as they think would be most beneficial to them as a tribe.

The minutes of all the council proceedings should accompany the report to the Department of your actions under these instructions, whether an agreement is executed or not. Word will be sent to the Indian Agent to cooperate with and assist you as far as he is able in conducting the proposed negotiations. Should any further information seem to you important, you

should advise the Department promptly and request the necessary instructions.

Very respectfully,

/s/F. E. Leupp
F. E. Leupp
Commissioner.

APPROVED: —

J.H.H.—McC.
E.

Secretary.

[#24]

(Legislative history of H.R. 20527—a bill for the sale of surplus lands in the Rosebud Reservation.)

[41 Cong. Rec. 241 (1906-1907)]

Rosebud Reservation: bills for sale of surplus lands in (see bills S. 6618; H. R. 20527, 24987, 25608).

[41 Cong. Rec. 38 (1906-1907)]

H.R. 20527—

To authorize the sale and disposition of surplus or unallotted lands in Tripp County, in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect.

Mr. Burke of South Dakota; Committee on Indian Affairs 15.

[41 Cong. Rec. 15 (1906)]

PUBLIC BILLS, RESOLUTIONS, AND MEMORIALS
INTRODUCED.

* * *

By Mr. BURKE of South Dakota: A bill (H.R. 20527) to authorize the sale and disposition of surplus or unallotted lands in Tripp County, in the Rosebud Indian Reservation, in the State of South Dakota; and making appropriation and provision to carry the same into effect—to the Committee on Indian Affairs.

[#25]

(Letter of Dec. 19, 1906 to the Secretary of the Interior from Commissioner F. E. Leupp.)

Land 108997-1906.

**DEPARTMENT OF THE INTERIOR
OFFICE OF INDIAN AFFAIRS
WASHINGTON**

December 19, 1906

The Honorable,
The Secretary of the Interior.

Sir:

I have the honor to acknowledge the receipt, by Department reference for consideration and report, of H. R. 20527, 59th Congress, 2nd Session, "To authorize the sale and disposition of surplus or unallotted lands in Tripp County, in the Rosebud Indian Reservation in the State of South Dakota, and making appropriation and provision to carry the same into effect." The bill was referred to you by the Chairman of the House Committee on Indian Affairs, with a request for a report thereon for the use of the committee.

In reporting on the bill I have the honor to say that at the request of the First Assistant Secretary of the Interior, I caused to be prepared and submitted to you on the 5th instant, for your consideration and approval, a letter of instructions for the guidance of Inspector McLaughlin in conducting negotiations with the Rose-